(1)

91-573

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

PABLO PIRELA,

Petitioner,

v.

VILLAGE OF NORTH AURORA,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court's decision in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982), is applicable to all agencies that are reviewed by a state court or only those agencies which are designated by the state to enforce the state's fair employment practice laws.

Whether this Court's decision in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982), requires that employment discrimination claims be barred after a state court has affirmed an agency's decision to discharge even when that agency did not hear or decide any of the discrimination claims.

Whether an employee who has brought charges of employment discrimination against the employer can be forced by that employer to litigate those charges before an agency designated and organized by the employer for hearing complaints of employee misconduct, or be subject to bar as a result of judicial review of that agency's decision to discharge that employee for misconduct, even though the employee first brought the initial charge of discrimination to the EEOC before the misconduct complaint was filed and even though the employer's agency is not the agency designated by the state to enforce that state's fair employment practice laws.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Pablo Pirela, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on June 28, 1991.

OPINIONS BELOW

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit was reported at ____ F.2d ____ (7th Cir. 1991), and is printed in Appendix A hereto *infra*, App. 1-13.

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, entered on January 6, 1989 is reported at ____ F. Supp. ____ (N.D. Ill. 1989), and is printed in Appendix B hereto *infra*, App. 14-15.

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, entered on March 4, 1988 is reported at ____ F. Supp. ____ (N.D. Ill. 1989), and is printed in Appendix C hereto *infra*, App. 16-20.

The order of the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois entered on March 26, 1987 is printed in Appendix D hereto *infra*, App. 21-22.

The Findings and Recommended Order of the Board of Fire and Police Commissioners of the Village of North Aurora, State of Illinois is printed in Appendix E hereto *infra*, App. 23-34.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit (Appendix A, *infra*, App. 1-13) was entered on June 28, 1991. The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. Section 1254(a).

STATUTES INVOLVED

Relevant portions of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(e) *et seq.* are printed in Appendix F, *infra*, App. 35-40.

Relevant portions of the Illinois Human Rights Act, Ill. Rev. Stat. (1985) ch. 68, para. 1-101 *et seq.* are printed in Appendix G, *infra*, App. 41-62.

Relevant portions of the Municipal Code of Illinois, Ill. Rev. Stat. (1985) ch. 24, para. 10-1-1 *et seq.* are printed in Appendix H, *infra*, App. 63-67.

28 U.S.C. Section 1738

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Administrative Review Act

Ill. Rev. Stat. ch. 110, para. 3-102

Scope of article. Article III of this Act shall apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of Article III of this Act or its predecessor, the Administrative Review Act. In all such cases, any other statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available shall not hereafter be employed.

Administrative Review Act

Ill. Rev. Stat. ch. 110, para. 3-104

Jurisdiction and venue. Jurisdiction to review final administrative decisions is vested in the Circuit Courts, except as to a final order of the Illinois Educational Labor Relations Board in which case jurisdiction to review a final order is vested in the Appellate Court of a judicial district in which the Board maintains an office.

Administrative Review Act

Ill. Rev. Stat. ch. 110, para. 3-110

Scope of review. Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facia true and correct.

Illinois Administrative Code

Title 56, Chapter XI, Section 5300.520

Conduct of Hearing.

a) All hearings hereunder shall be conducted consistent with this Part by an Administrative Law Judge who shall be a licensed attorney appointed to be an Administrative Law Judge for the Commission pursuant to Section 8-102(D) of the Act.

Illinois Administrative Code

Title 56, Chapter XI, Section 5300.720

Discovery.

a) Discovery shall be obtainable through the following methods:

1) Written Interrogatories—A party may direct written interrogatories to any other party, serving copies of such interrogatories at the same time on all other parties. Such interrogatories shall be restricted to the subject matter of the complaint or defense and shall avoid undue detail or the imposition of excessive burden or expense on the answering party. Within twenty-eight (28) days after service of the interrogatories upon the answering party, the answering party shall serve upon the propounding party an answer under oath or affirmation, or an objection, to each interrogatory, serving copies of such answers and objections at the same time on all other parties. Any objection to an answer or refusal to answer an interrogatory shall, upon motion of the party propounding the interrogatory, be ruled upon by the Administrative Law Judge. Where appropriate, a document may be served in answer to an interrogatory. Supplemental interrogatories shall not be allowed except on leave of the Administrative Law Judge for good cause shown.

2) Production, Inspection, Copying or Photographing of Documents and Tangible Things—A party by written request served upon all other parties and filed with the Administrative Law Judge may require any other party to produce for inspection, copying or photographing any documents, object or tangible thing which is relevant to the subject matter of the complaint or defense. The party upon whom the request is served shall respond to the request within twenty-eight (28) days stating with respect to each item or category that inspection and related activities will be permitted as required, unless the request is objected to, in which event the reasons for objection shall be stated. On motion of the requesting party, the Administrative Law Judge shall rule with respect to such objections.

3) Depositions—A deposition may be taken as of right only under the provisions of section 8-104(F) of the Act. The parties may take depositions by agreement.

b) Prior to the time all respondents have answered or are required to answer, no discovery procedure shall be noticed or undertaken except by agreement of the parties or with leave of the Administrative Law Judge for good cause shown.

c) At any time the Administrative Law Judge may, on his/her own motion or on motion of any party or witness, make such protective orders as justice and fairness may require, denying, limiting, conditioning or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage or oppression.

d) All matters that are privileged against disclosure in civil cases in the courts of the State of Illinois shall be privileged against disclosure through any discovery procedure hereunder.

e) The hearing of a matter shall not be delayed to permit discovery unless due diligence is shown.

STATEMENT OF CASE

Pablo Pirela was employed as a police officer for the Village of North Aurora ("Village") (R.40 at 1). Pirela is a black Puerto Rican, and was the only black employed by the Village. (R.40 at 1, 2, and 6).

On January 29, 1986, Pirela initiated charges against the Village with the Equal Employment Opportunity Commission ("EEOC") by completing the intake questionnaire and being interviewed by an intake officer. A formal charge was filed on May 27, 1986. (R.40 at 3). A few days after initiating the charges, Pirela told a fellow officer about the charge, and the officer's response was that he thought "it would be interesting if the chief [Police Chief Edward Kelly] knew that." (R.40 at 4).

In April 1986, Police Chief Edward Kelly ("Kelly") brought a complaint against Pirela and another police officer in which he accused Pirela of six infractions of the Rules and Regulations of the North Aurora Police Department. (R.40 at 4). The complaint was filed with the Board of Fire and Police Commissioners of North Aurora ("Board"). (R.40 at 4). After a hearing of the charges, the Board entered its Findings and Decision in which it found that Pirela was guilty of certain violations of the Rules and Regulations, and was therefore discharged. (R.40 at 4; R.16 at Exhibit B pp. 1-13; App. E).

Pirela then filed a complaint on June 20, 1986, with the Sixteenth Judicial Circuit in which he requested judicial review of the Board's decision. (R.40 at 4). On March 26, 1987, the state court affirmed the Board's decision on the sole basis that the Board's decision was not against the manifest weight of the evidence. (R.40 at 4; R.16 at Exhibit D; App. D).

In June 1986, Pirela also filed an amended charge with the EEOC. (R.40 at 4). The amended charge included allegations against the Village of discrimination for his discharge. The amended charge also continued to allege discriminatory conduct in promotions, wages and suspensions. After receiving a right to sue letter from the EEOC in March 1987, Pirela filed a three-count complaint against the Village alleging discrimination on the basis of race and national origin in the Village's promotion, salary, suspension and discharge procedures. (R.1). Specifically, Pirela's complaint alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq.*, Section 1981, 42 U.S.C. Section 1981, and the Equal Pay Act, 29 U.S.C. Section 201 *et seq.* (R.1).

The Village filed a Motion to Dismiss Pirela's complaint on the grounds of *res judicata* as to Counts I and II, and for failure to state a cause of action as to Count III. (R.9). On March 4, 1988, the Honorable Ann Williams entered a Memorandum and Order whereby Count III of the Complaint was dismissed. (R.23-24; App. C). As to the issue of whether *res judicata* barred Counts I and II of the Complaint, the Court converted that portion into a Rule 56 Motion for Summary Judgment. Both parties were then granted time to file additional material on the converted motion. (R.23-24).

After the parties submitted memorandums on the converted Motion for Summary Judgment, the Honorable George Marovich granted the Village's motion on January 6, 1989, and dismissed Pirela's Amended Complaint. (R. 46-47; App. B).

On appeal, the Seventh Circuit held that Judge Marovich properly found that Pirela's claims regarding his discharge were barred on the grounds of res judicata, but reversed the Judge's ruling that Pirela's claims regarding

promotions and salary were also barred. Accordingly, the Seventh Circuit remanded to the District Court those portions regarding Pirela's claims that the Village discriminatorily denied him promotions and salary increases for further proceedings. (App. A).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I.

THE COURT OF APPEALS HAS EVISCERATED THE CONGRESSIONAL SCHEME OF TITLE VII IN HOLDING THAT VICTIMS OF EMPLOYMENT DISCRIMINATION MUST LITIGATE THEIR CHARGES BEFORE A MUNICIPAL AGENCY CHOSEN AND ORGANIZED BY THE EMPLOYER OR BE BARRED UNDER GROUNDS OF RES JUDICATA FROM PURSUING THEIR CLAIM AT ALL.

A. The Court of Appeals' Expansion of This Court's Decision in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982), Results in the Destruction of the Congressional Scheme of Title VII.

In *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982), this Court held that a claimant who proceeds with a charge of discrimination through the state agency established by the State to enforce its Fair Employment Practice laws ("FEP agency"), and then obtains a judicial review of that agency's decision, is barred under Section 1738 from bringing a Title VII action in Federal Court. *Id. Kremer* rested on the fact that the State court reviewed the decision of the "agency charged with enforcing the [State's] law prohibiting employment discrimination". *Id.* at 464. Indeed, in distinguishing *Alexander v. Gardner-Denver*, 415 U.S. 36 (1973), where a private

arbitration decision was held not binding on a subsequent employment discrimination claim, this Court in *Kremer* stated that

> unlike arbitration hearings under collective-bargaining agreements, state fair employment practice laws are explicitly made part of the Title VII enforcement scheme. Our decision in *Gardner-Denver*, explicitly recognized the 'distinctly separate nature of these contractual and statutory rights'. [Citation omitted]. Here we are dealing with a *state statutory right, subject to state enforcement in a manner expressly provided by the federal Act. Id.* at 477-78 (Emphasis added).

Congress' "[r]eluctance to rely entirely on the States does not require a departure from the traditional rules of res judicata when a state fair employment law exists, a state agency has investigated and processed a grievance, and a state court has upheld the agency's decision as procedurally fair and substantively justified." *Kremer*, 456 U.S. 472, fn. 10.

In holding that the Village Board can preclude Pirela from pursuing his discrimination claim in the manner provided by Title VII, the Court of Appeals has expanded *Kremer* to include not only State court affirmance of that State's FEP agency, but State court affirmance of any agency, municipal, state or otherwise. Such a ruling runs roughshod over Title VII. This is particularly true in view of this Court's recognition in *Kremer* that Congress "felt the federal system should defer only to adequate state laws" in enforcing Title VII, *id.* at 472, and that Title VII clearly intends that only those agencies empowered by the State to enforce that State's fair employment practice laws may supersede the federal enforcement procedures. To permit any local administrative agency to force

a claimant to litigate his Title VII rights before it simply undermines the Congressional scheme of Title VII.[1]

In *Kremer*, this Court distinguished its decision from *Gardner-Denver* "on the inappropriateness of arbitration as a forum for the resolution of Title VII issues". *Kremer*, 456 U.S. at 478. The Village Board here is similarly inappropriate to resolve Title VII issues. First, it is not authorized to hear civil rights violations or to grant relief for such violations. Ill. Rev. Stat. (1985) ch. 24, para. 10-1-1 *et seq.* Administrative agencies are creatures of statute and cannot act outside the bounds of their enabling act. *Rossler v. Morton Grove Police Pension Board*, 178 Ill. App. 3d 769 (1989). The Board is only authorized to hear charges of misconduct against police officers, not charges of discrimination brought by them. Ill. Rev. Stat. (1985) ch. 24, para. 10-1-18.1. Second, the Board commissioners are selected by the mayor of the municipality and minimal qualifications are required. Ill. Rev. Stat. (1985) ch. 24, para. 10-1-1. Third, the Board has no pretrial discovery procedures available for handling such discrimination claims.

In contrast, Illinois has clearly established its FEP agency under the Illinois Human Rights Act ("IHRA"). Ill. Rev. Stat. (1985) ch. 68, para. 1-101 *et seq.* The IHRA provides that the Human Rights Commission and the Department of Human Rights are authorized to hear civil

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[1] Somewhat surprisingly, the Seventh Circuit has previously stated that *Kremer* does not stand "for the proposition that any state court decision reviewing an administrative action necessarily bars federal suit". *Jones v. City of Alton*, 757 F.2d 878, 885. Indeed, the court stated that in *Kremer*, the plaintiff "was proceeding on administrative review of a decision rendered by a local human rights agency which was charged with responsibility for the very subject matter the plaintiff wanted to raise in federal court". *Id.*

rights violations. Ill. Rev. Stat. ch. 68, para. 7-101 *et seq.* and 8-101 *et seq.* The Administrative Law Judges that hear the claims are licensed attorneys appointed pursuant to Section 8-102(D) of the IHRA. Ill. Adm. Code, Title 56, Ch. XI, Section 5300.520(a). Further, before hearing, the parties are entitled to pre-trial discovery. Ill. Adm. Code, Title 56, Ch. XI, Section 5300.720.

Moreover, the IHRA sets forth the specific guidelines by which a local agency may obtain jurisdiction over the enforcement of the Act. Ill. Rev. Stat. (1985), ch. 68, para. 7-108. The Board has never been appointed to assume those duties. Further, the IHRA exclusively vests the jurisdiction to hear civil rights claims with the Human Rights Commission and the Department of Human Rights. Ill. Rev. Stat. (1985) ch. 68, para. 8-111(C). Accordingly, the Board never had the authority to adjudicate or to remedy Pirela's civil rights claims.

The Court of Appeals decision announces the rule that a victim of discrimination can be forced to litigate his charge before the very entity that he is charging with discrimination. Congress by granting the States a role in enforcing Title VII did not intend such a result. Indeed, Congress specifically provided that only a State's FEP agency can supersede Title VII enforcement by the EEOC. Yet, according to the Seventh Circuit's decision here, any state or municipal agency can decide a claimant's Title VII rights, no matter how that agency is related to the entity charged with discrimination and no matter if that forum is not of the claimant's choosing. This decision simply makes nugatory Title VII's provisions regarding the relationship of the EEOC and the state FEP agencies in enforcing Title VII rights.

B. The Seventh Circuit's Decision Misapplies *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982) in Holding that All Issues, Even Those Not Actually Litigated Are Barred.

Again, in *Kremer*, the claimant was foreclosed from pursuing his federal Title VII remedy after he unsuccessfully sought judicial review of the FEP agency's decision regarding his discrimination charge. 456 U.S. 461. However, the adverse decision from the FEP agency was made only after a thorough investigation of the specific allegations of the claimant's charge. *Id.* at 464. In contrast, Pirela's discrimination claims were foreclosed without any investigation by any body, and without a decision as to the merit of his charges.

The Seventh Circuit has expanded *Kremer* to include preclusion of all claims, whether or not they have actually been litigated. The other circuits have not applied *Kremer* this broadly, but have read *Kremer* to prevent relitigation of issues actually litigated. *Jalil v. Audel Corp.*, 873 F.2d 701 (3rd Cir. 1989); *Kelly v. T.Y.K. Refractories Co.*, 860 F.2d 1188 (3rd Cir. 1988); *Perry v. Kunz*, 878 F.2d 1056 (8th Cir. 1989); *Scroggins v. State of Kansas*, 802 F.2d 1289 (10th Cir. 1986); *Carlisle v. Phenix City Bd. of Ed.*, 849 F.2d 1376, 1380 fn. 3 (11th Cir. 1988). "Both the text of Title VII and its legislative history indicate that Congress intended the claimant to have at least one opportunity to prove his case in a de novo trial in court." *Kremer*, 456 U.S. at 511 (Stevens J. dissenting). In one broad stroke, the Seventh Circuit has deprived Pirela from obtaining a hearing on his discrimination claims, and in doing so, has failed to follow this Court's ruling in *Kremer*, and as it has been applied in the other circuits.

C. In Holding that the Decision of the Board of Fire and Police Commissioners of North Aurora to Discharge Pablo Pirela for Misconduct Precluded Him from Pursuing His Charge of Discrimination in Federal Court, the Court of Appeals Errs in Finding that Illinois Courts Would Give the Board's Decision Such Preclusive Effect.

"It is settled law that a state court judgment must be given the same res judicata effect in federal court that it would be given in the courts of the rendering state." *Jones v. City of Alton*, 757 F.2d 878, 883 (7th Cir. 1985). Under the IHRA, state courts do not have de novo review of charges of discrimination. Ill. Rev. Stat. (1985) ch. 68, par. 8-111(C). Illinois courts have held that since the legislature has designed the IHRA to create uniformity in the area of civil rights protection through the implementation of a single, comprehensive scheme of procedures and remedies, the IHRA is the exclusive source for redress of alleged civil rights violation. *Mein v. Masonite Corp.*, 109 Ill. 2d 1, 7 (1985). Accordingly, neither the Board nor the State court had jurisdiction to hear Pirela's civil rights claims.[2]

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[2] In holding that the IHRA is not the exclusive source of redress for civil rights violations, the Appeals Court cited *Board of Trustees of the Police Pension Fund of the City of Urbana v. Illinois Human Rights Commission*, 141 Ill. App. 3d 447 (4th Dist. 1986), where the court held that the Illinois Human Rights Commission did not have jurisdiction to hear a complaint of handicap discrimination filed by a police officer against the pension board. The court failed, however, to note that this case was distinguished by *Bellwood Board of Fire and Police Commissioners v. Human Rights Commission*, 184 Ill. App. 3d 339 (1st Dist. 1989). Specifically, the court in *Bellwood* held that where the Pension Code gives the Pension Board exclusive authority to control and manage the pension fund, the Municipal Code does not do the same for the Board of Police and Fire Commissioners. As such, the court held that the Board of Police and Fire Commissioners are within the exclusive jurisdiction of the IHRA. *Id.* The Seventh Circuit has simply misread the law in this area.

Moreover, the Board's decision was reviewed under the Administrative Review Act and the State court had no power to hear the case de novo, but was limited to only reviewing the record created by the Board. Ill. Rev. Stat. (1985) ch. 110, par. 3-110. Since the State court could only review that which the Board heard, and the Board did not have the authority to hear Pirela's civil rights claims, it follows that the State court had no jurisdiction to hear Pirela's claims.

Crucial to the application of res judicata is the requirement that the party against whom the earlier decision is asserted must have had a "full and fair opportunity" to litigate the specific issue or claim in the earlier case. *Haring v. Prosise*, 462 U.S. 306, 313 (1983). Without the jurisdiction to hear Pirela's civil rights claims, the State court review of the Board's decision cannot bar Pirela from litigating his civil rights claims in Federal court.[3]

Further, the doctrine of res judicata is an equitable doctrine, subject to equitable principles. "It 'should only be applied as fairness and justice require'." *Jones*, 757 F.2d at 885. Pirela's original discrimination charge occurred prior to the complaint that was brought against him, and it was reasonable that he would assume the bifurcation of his discrimination charges from the complaint brought against him by the Board. *Hill v. Coca Cola Bottling Co.*,

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[3] Pirela also reasonably believed the State court did not have jurisdiction to hear his Title VII claims. Indeed, even when this Court ruled in *Yellow Freight System, Inc. v. Donnelly*, ___ U.S. ___, 110 S.Ct. 1566, 1570 (1990), that State courts had concurrent jurisdiction over Title VII, it noted that "most legislators, judges, and administrators who have been involved in the enactment, amendment, enforcement, and interpretation of Title VII expected that such litigation would be processed exclusively in federal courts".

786 F.2d 550 (2nd Cir. 1986) (unfair to penalize claimant under doctrine of res judicata for employing authorized procedures, particularly when the litigated issue in the unemployment insurance proceeding barely touched on discrimination claims, and since claimant properly observed this bifurcation of the State's agencies by separately filing claims for unemployment insurance and racial discrimination). The Board was not empowered with the authority to hear civil rights violation, and was not the FEP agency designated by the State as envisioned under Title VII. Throughout the proceedings before the Board and the EEOC, Pirela continued to observe the bifurcation of these agencies. He should not be prejudiced for having done so.

Moreover, "the choice of the forums inevitably affects the scope of the substantive right to be vindicated". *Gardner-Denver*, 415 U.S. 36, 56 (1973). The Appeals Court has ruled that Pirela should have presented his claims of discrimination before the Board even though the Board had no authority to hear or to remedy such discrimination, was not the forum of his choosing, did not have the pretrial discovery procedures of the scope provided under the IHRA and the Federal Rules of Civil Procedure, and was organized by the very entity Pirela was charging with discrimination. If the Court of Appeals decision is held to stand, the civil rights of an employee who is subject to discharge by any local or state agency have no meaning. To permit an agency who is accused of discrimination to decide that very issue is patently unfair. To maintain that the State court review that is limited to only review of the issues decided by the administrative agency fairly gives the claimant an opportunity to bring his discrimination claims that he had against the very entity related to that agency is to blithely dis-

regard the scheme and purpose of Title VII and the IHRA.

Further, the Appeals Court erred in finding that Pirela's discrimination claims would have been relevant and admissible in the proceedings before the Board. "[A] finding of termination for just cause does not necessarily negate a subsequent finding of discrimination." *Hill*, 786 F.2d at 553 *citing McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976). In *Santa Fe*, this Court stated that Title VII "prohibits all racial discrimination in employment . . . and while crime or other misconduct may be legitimate basis for discharge, it is hardly one for racial discrimination." *Id.* at 283. The issue before the Board was whether Pirela actually committed the acts alleged in the complaint. The fact that Pirela's discrimination claims alleged that he was charged with these acts of misconduct because he filed an EEOC charge and that other white police officers have committed similar and more serious offenses without discharge is irrelevant as to that issue.[4]

Finally, the Appeals Court reversed the lower court's dismissal as to Pirela's claims of discrimination on the basis of promotions and salary. In view of the circumstances of this case and the fact that judicial economy will be little served in precluding Pirela from bringing only a portion

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[4] Arguably, the only portion of the case before the Board where the issue of discrimination would be relevant would be at the aggravation and mitigation stage of the proceedings. Yet, when Pirela testified as to why he thought that the actions against were motivated by discriminatory animus, he was cut-off in mid sentence. Report of Proceedings before the Police and Fire Commissioners, pp. 22-24, May 17, 1986. Further, the Board did not raise Pirela's statements of differential treatment in its discharge decision.

of his claims while allowing other portions to be litigated, the Appeals Court failed to comply with the equitable standards that res judicata "should only be applied as fairness and justice require". *Jones*, 757 F.2d at 885.

II.

THE CIRCUITS ARE DIVIDED AS TO THE EXTENT TO WHICH RES JUDICATA SHOULD APPLY IN MATTERS OF EMPLOYMENT DISCRIMINATION, AND THIS COURT'S SUPERVISORY AUTHORITY IS NECESSARY TO CLARIFY THIS ISSUE.

The Seventh Circuit's analysis by which it holds that Pirela is precluded on the grounds of res judicata from litigating his claims of discrimination in Federal court as the result of the State court affirmance of the Board's decision to terminate Pirela for misconduct is in conflict with all but one other Circuit that has reviewed this issue. In *Owens v. N.Y.C. Housing Authority*, 934 F.2d 405 (2nd Cir. 1991), the court held that the State court review of the Housing Authority's decision to dismiss an employee for misconduct did not bar that employee from pursuing her age discrimination claim in Federal court. *Id.*

Owens initially brought a complaint against her supervisors. The Housing Authority then brought disciplinary charges against Owens based on the reports of her supervisors. A full hearing was held before the Housing Authority over a period of eight days. The Authority found all charges proven and Owens was discharged. *Id.* at 406-07. Owens sought administrative review before the state court, and the dismissal was affirmed. *Id.*

During that same period, Owens brought a complaint in Federal court in which she alleged that her discharge was based on age and race discrimination, and that the disciplinary charges were brought in retaliation for her

bringing the initial EEOC charge. In holding that res judicata did not bar her complaint, the court found that Owens did not have a full and fair opportunity to bring her discrimination claim, and that the state court did not have the authority to hear her case de novo. *Id.* at 410.

The analysis in *Owen* is similar to that of the other circuits which have held that res judicata did not work as a bar to a claim for employment discrimination. *Jalil v. Audel Corp.*, 873 F.2d 701 (3rd Cir. 1989), *cert. denied*, ____ U.S. ____, 110 S.Ct. 725 (1990) (State court affirmance of arbitrator's decision adverse to employee did not bar employee from bringing Title VII action in Federal court); *Kelly v. T.Y.K. Refractories Co.*, 860 F.2d 1188 (3rd Cir. 1988) (State court review of unemployment compensation board decision that employee voluntarily quit did not preclude subsequent action in Federal court under section 1981); *Perry v. Kunz*, 878 F.2d 1056 (8th Cir. 1989) (State court review affirming Merit System Board's decision of discharge after hearing did not bar employee from pursuing charge of age and race discrimination in Federal court); *Scroggins v. State of Kansas*, 802 F.2d 1289 (10th Cir. 1986) (State court review of Civil Service Board's decision to discharge employee did not preclude discrimination action in Federal court); *Carlisle v. Phenix City Bd. of Ed.*, 849 F.2d 1376 (11th Cir. 1988) (State court decision that Board of Education's transfer of black principal was for legitimate and not personal or political reasons did not preclude principal's section 1983 and Title VII actions in Federal court).

The Eighth Circuit, however, has held that a police officer was barred from bringing his section 1981 and 1883 actions in Federal court as the result of the State court review of the police commissioner's decision to discharge.

Swapshire v. Baer, 865 F.2d 948 (8th Cir. 1989). In *Swapshire*, the court found that the police officer raised the issue before the State court that his discharge was discriminatory. *Id.* at 950-51. Accordingly, the court found that since the officer actually litigated the issue before the State court, he could not litigate it again. *Id.* Thus, even *Swapshire* does not follow the Seventh Circuit decision here since Pirela never litigated the issue of his discrimination claims before the State court.

The Seventh Circuit's application of *Kremer* is of great concern to Title VII claimants. Pursuing State court review of an agency's decision regarding any part of a claimant's employment can result in unjustifiable consequences.[5] The concern that Title VII rights can now be undermined by any agency forces a claimant to give up one right to preserve another. This is presently the situation even though the scheme of Title VII only permits the FEP agencies to take jurisdiction away from the EEOC.

Pursuant to Rule 17 of the Supreme Court of the United States, Pablo Pirela requests that this Court exercise its supervisory jurisdiction over the Seventh Circuit Court of Appeals in resolving this crucial and important question.

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[5] The claimant is left with a Hobson's choice. Whether to pursue his claim before an agency directly related to the entity he is charging with discrimination, or forego the right to seek State court review of the agency decision. Moreover, a claimant who does not seek State court review may still have his discrimination claims dismissed because of a failure to exhaust administrative remedies. See *Scoggins*, 802 F.2d 1289.

CONCLUSION

Pablo Pirela has never had his employment discrimination claims actually litigated. The moment after he filed his initial EEOC charge against the Village of North Aurora, he was forced to defend himself against charges brought by his superior. These charges proceeded to hearing before the Village Board. The Board found that Pirela had committed acts of misconduct and discharged him. On administrative review, the State court held that the Board's decision was not contrary to the manifest weight of the evidence. Neither the Board's decision nor the State court touched upon Pirela's discrimination claims which at that time were proceeding through the EEOC.

The Seventh Circuit has now ruled that Pirela's Title VII and section 1981 actions regarding his discharge and retaliation are barred by the Board's decision. This decision is not only in conflict with the other circuits, it also misapplies this Courts decision in *Kremer v. Chemical Construction Corp.*, 456 U.S.461 (1982), so as to make nugatory Title VII's provisions regarding the relationship of the EEOC and the state FEP agencies in enforcing Title VII rights. The Appeals Court's decision simply grants jurisdiction to enforce Title VII rights to any agency, no matter how that agency is related to the entity charged with discrimination and no matter if that agency is not of the claimant's choosing. Because of the Seventh Circuit's significant departure from the Congressional scheme of Title VII, from this Court's decision in *Kremer v. Chemical Construction Corp.*, 456 U.S.461 (1982), and from the authority of other circuits, Pablo Pirela respectfully requests that the United States Supreme Court exer-

cise its power of supervision and resolve this important question of federal law.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 89-1231

PABLO F. PIRELA,

Plaintiff-Appellant,

v.

VILLAGE OF NORTH AURORA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 87 C 4981—**George M. Marovich**, *Judge.*

ARGUED JUNE 14, 1990—DECIDED JUNE 28, 1991

Before POSNER, FLAUM, and KANNE, *Circuit Judges.*

KANNE, *Circuit Judge.* After being passed over for two promotions and being suspended without pay for various infractions of the police department's rules and regulations, Pablo F. Pirela, a black Puerto Rican, came to believe he was being discriminated against on the basis of his race and national origin. Accordingly, on January 29, 1986, Pirela initiated charges against the Village of North Aurora with the Equal Employment Opportunity Commission by completing an intake questionnaire and being interviewed by an intake officer. At that time,

Pirela was informed that a formal charge against the Village would be drafted for his review and signature.

However, before Pirela could bring formal charges against the Village, Police Chief Edward Kelly of the North Aurora Police Department filed a complaint against Pirela which charged Pirela with five infractions of the Rules and Regulations of the North Aurora Police Department. In response to Kelly's complaint, the Board of Fire and Police Commissioners of North Aurora conducted hearings on the matter in April of 1986. After the hearing, the Board found Pirela guilty of four of the five alleged violations and subsequently discharged him from his position with the NAPD.

Pirela filed a complaint for administrative review of the Board's decision in the Circuit Court for Kane County, Illinois. When he presented his case to the circuit court, Pirela argued only that the Board's decision was against the manifest weight of the evidence; he did not introduce (or attempt to introduce) any evidence that his employment was terminated as the result of racial or national origin discrimination. The circuit court concluded that the Board's findings were not against the manifest weight of the evidence and affirmed the Board's decision discharging Pirela on March 26, 1987.

During the pendency of the state court proceedings, Pirela continued to pursue his discrimination charge against the Village. On May 27, 1986, he filed a formal charge of discrimination with the EEOC. Then, later in June of the same year, Pirela amended his EEOC charge to include an allegation of discriminatory discharge. Soon after receiving his right to sue letter from the EEOC in March 1987, Pirela filed a three-count complaint in federal district court alleging discrimination on the basis of race in the Village's promotion, salary, suspension, and discharge procedures pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, discrimination on the basis of national origin in the Village's promotion, salary, suspension, and discharge procedures pursuant to 42 U.S.C. § 1981, and, violations of the Equal Pay Act, 29 U.S.C. § 201 *et seq.*

The Village moved to dismiss the lawsuit for failure to state a claim for which relief could be granted pursuant to Fed. R. Civ. P. 12(b)(6). The district court granted the motion with respect to count III because the Equal Pay Act applies only to wage differentials based on sex discrimination, *see Ende v. Board of Regents*, 757 F.2d 176, 183 (7th Cir. 1985); 29 U.S.C. § 206(d)(1), and Pirela had failed to include any allegations of sex-based discrimination.[1] Although the Village argued that Pirela's Title VII and § 1981 claims were barred by *res judicata*, the district court refused to dismiss counts I and II because Pirela's complaint had made no reference to any prior court proceedings. Instead, the court exercised its discretion and converted the Village's Rule 12(b)(6) motion into a Fed. R. Civ. P. 56 motion for summary judgment. After the parties had each submitted a memorandum addressing the converted motion for summary judgment, the court granted the Village's motion and dismissed Pirela's amended complaint. Pirela now appeals from the district court's grant of summary judgment.

I.

The federal courts are required to give state court judgments "the same full faith and credit . . . as they have by law or usage in the courts of such State." 28 U.S.C. § 1738; *see Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S. Ct. 1327, 1331 (1985); *Schlangen v. Resolution Trust Corp.*, slip op. at 4 (7th Cir. June 10, 1991); *Torres v. Rebarchak*, 814 F.2d 1219, 1222 (7th Cir. 1987). Thus, when a state court judgment would be given preclusive effect under state law, section 1738 requires the preclusion of Title VII claims, *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 476, 102 S. Ct. 1883, 1894-95 (1982); *see also Jones v. City of Alton*, 757 F.2d 878, 883 (7th Cir. 1985); *La Salle Nat'l Bank of Chi-*

[1] Pirela does not challenge the district court's dismissal of count III on appeal.

cago v. County of Du Page, 856 F.2d 925, 930 (7th Cir. 1988), *cert. denied*, 489 U.S. 1081, 109 S. Ct. 1536 (1989), as well as § 1981 claims. *See Buckhalter v. Pepsi-Cola Bottlers*, 768 F.2d 842, 850 (7th Cir. 1985); *Washington v. Groen Div./Dover Corp.*, 634 F. Supp. 819 (N.D. Ill. 1986). Under *Kremer*, a court must employ a two-prong test for deciding whether a subsequent claim is barred by the doctrine of *res judicata*. We must first ascertain whether "the law of the state in which the prior judgment is rendered would give that judgment preclusive effect against the claims asserted in the federal action." *Welch v. Johnson*, 907 F.2d 714, 719 (7th Cir. 1990) (citing *Kremer*, 456 U.S. at 481-82, 102 S. Ct. at 1897-98). Then, the court must determine whether the party had a full and fair opportunity to pursue its claim in the prior state proceeding. *Id.*

The basic principles of Illinois *res judicata* law are well-established. Under Illinois law, to constitute *res judicata* a decision must involve "(1) identity of parties or their privies in the two suits; (2) identity of causes of action in the prior and current suit; and (3) a final judgment on the merits in the prior suit." *Schlangen v. Resolution Trust Corp.*, slip op. at 5 (7th Cir. June 10, 1991); *Rockford Mut. Ins. Co. v. Amerisure Ins. Co.*, 925 F.2d 193, 195 (7th Cir. 1991); *Torres*, 814 F.2d at 1222. However, "the bar of *res judicata* extends not only to questions actually decided, but also to all grounds of recovery and defenses which might have been presented in the prior litigation between the parties." *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1234 (7th Cir. 1986) (citing *Laker v. Tomes*, 90 N.E.2d 774, 777 (Ill. 1950)). As a result, "[a] defendant [ ] may not relitigate a defense, which was available but not raised in a prior action, by making it the basis of a claim in a subsequent action against the original plaintiff." *Id.* at 1234.

In this case, the parties contest only the second requirement—the identity of causes of action in the prior and current lawsuits. Specifically, the Village argues that Pirela should have raised his discrimination claims as a

defense during his termination proceedings before the Board and circuit court. For the most part, we agree with the Village.

As this court has frequently noted, the Illinois courts have adopted two differing tests—the "same evidence" approach or the "transactional" approach—for determining whether a previous suit should be given *res judicata* effect. *See Rockford Mut. Ins.*, 925 F.2d at 197; *Hagee v. City of Evanston*, 729 F.2d 510, 512-13 (7th Cir. 1984). Under the "same evidence" test or "proof" approach, the courts must determine "whether the same evidence would sustain both actions." *Id.* at 513 (citing *Mendelson v. Lilliard*, 83 Ill. App. 3d 1088, 1094, 404 N.E.2d 964, 970 (1980); *Rotogravure Serv., Inc. v. R.W. Borrowdale Co.*, 77 Ill. App. 3d 518, 525, 395 N.E.2d 1143, 1148 (1978)). On the other hand, "a court employing a transaction approach will focus not on the type of proof required in each suit but the factual setting in which each suit arises." *Hagee*, 729 F.2d at 513. Thus, if both actions arise out of the same group of operative facts, the doctrine of *res judicata* bars the second suit. *Rockford Mut. Ins.*, 925 F.2d at 197; *Hagee*, 729 F.2d at 513; *Baird & Warner, Inc. v. Addison Indus. Park, Inc.*, 70 Ill. App. 3d 59, 64, 387 N.E.2d 831, 838 (1979).

Pirela's claim of discriminatory treatment by the Village in its termination and suspension procedures constitutes the same cause of action under either the "same evidence" or "transactional" approach. At their most basic, both suits would require Pirela to prove that the Village acted in a discriminatory manner when it suspended and discharged him. It is clear that Pirela would have to use the same proof to establish his federal discrimination claims as he could have presented in defense to his discharge from the NAPD. *See, e.g., Welch*, 907 F.2d at 721. Thus, because Pirela's same evidence would sustain both suits, application of the "same evidence" test would preclude his subsequent lawsuit claiming violations of Title VII and § 1981. Our application of the transactional approach com-

pels the same conclusion. Both of Pirela's claims arose out of the same operative facts: Pirela's misconduct and the NAPD's procedures relating to suspension and termination. Because his Title VII and § 1981 claims in this litigation, as well as the possible defense he had in the state proceedings, concern this single procedural scenario, Pirela's action is barred by the transactional approach.

Guided by this court's decision in *Welch*, we reach the opposite result—under both the "transactional" and "same evidence" tests—with respect to Pirela's claims that the Village discriminated against him with respect to wages and promotions. According to the record, Pirela was denied two promotions prior to the events which resulted in his eventual discharge from the NAPD. Pirela's complaint also reveals that the alleged facts evincing the Village's practice of discriminating against Pirela with respect to pay also pre-dated the specific events leading to his discharge. Thus, Pirela's evidence of either of these charges could have had little, if any, relevance to the state proceedings concerning his termination. Nor would Pirela's later dismissal charges be relevant to a federal discrimination claim based on the Village's discrimination against Pirela with respect to wages or the earlier denial of promotions.

A review of the facts under the "transactional" test yields the same results. Pirela alleges that he was denied a promotion to Juvenile Officer in 1984, as well as a promotion to Head Juvenile Officer in 1985, although he was more qualified than the white employee who received the promotion. Therefore, all the facts relevant to the Village's denial of promotions to Pirela were concluded prior to the facts pertinent to Pirela's discharge action in 1986.

We therefore conclude that Pirela's Title VII and § 1981 claims (alleging that his termination and suspensions were discriminatory) constitute the same cause of action under Illinois *res judicata* law as his state discharge proceeding.

However, his claims that the Village denied him promotions and wages because of his race and national origin are separate causes of action not barred by *res judicata*.

II.

Despite our conclusion that Pirela's claims of discriminatory termination and suspension constitute the same cause of action as the administrative discharge hearing and subsequent circuit court review, his federal suit is not necessarily barred by *res judicata*. It is a well-established principle that "[n]o decision may constitute *res judicata* . . . if the party against whom it is asserted has not had a full and fair opportunity to litigate his claims." *Lee v. City of Peoria*, 685 F.2d 196, 201 (7th Cir. 1982) (citing *Kremer*, 456 U.S. at 481-82, 102 S. Ct. at 1897). That is, at its most basic, the state proceedings must satisfy minimum due process requirements. *Kremer*, 456 U.S. at 481-82, 102 S. Ct. at 1897-98; *Welch*, 907 F.2d at 719; *Wakeen v. Hoffman House, Inc.*, 724 F.2d 1238, 1241 (7th Cir. 1983). Therefore, even though Pirela's claims of discriminatory practices in the Village's termination process arise out of the same facts as his police board hearing, they are not barred if he lacked a "full and fair" opportunity to raise his discrimination claim before the police board.

On appeal, Pirela maintains that he lacked a "full and fair" opportunity to litigate his claim of discrimination for several reasons. First, Pirela argues that Illinois law bars the Village from asserting a *res judicata* defense to his Title VII and § 1981 claims because the Board and circuit court had no jurisdiction to hear these claims. We disagree. Although Pirela argues that neither the police board nor the Illinois circuit court had jurisdiction to hear his discrimination claim because only federal courts have jurisdiction over Title VII claims, *Yellow Freight System, Inc. v. Donnelly*, ___ U.S. ___, 110 S. Ct. 1566 (1990), clearly disposes of this argument. In *Yellow Freight*, the Supreme Court affirmed our decision that the states and

federal government share concurrent jurisdiction over Title VII claims. *Id.* at ____, 110 S. Ct. at 1570; *see also Donnelly v. Yellow Freight System, Inc.*, 874 F.2d 402 (7th Cir. 1989). Accordingly, the federal courts do not have exclusive jurisdiction over Title VII claims. The police board was therefore permitted to hear Pirela's discrimination defense. *See, e.g., Lee*, 685 F.2d at 200-01 (contemplating police board hearing of plaintiff's discrimination defenses).

Pirela also argues that his discrimination claim could not have been heard by either the police board or the state court because neither body had jurisdiction to hear this type of claim under Illinois law. To reach this conclusion, he maintains that the Illinois Human Rights Act vests sole jurisdiction over civil rights claims in the Illinois Human Rights Commission. In support of his argument, Pirela cites *Mein v. Masonite Corp.*, 485 N.E.2d 312, 315 (Ill. 1985), where the Illinois Supreme Court stated that the Illinois Human Rights Commission was to be "the exclusive source of redress for alleged human rights violations" through the "comprehensive scheme of remedies and administrative protections" provided by the Illinois Human Rights Act. However, the lower Illinois courts have interpreted *Mein* to stand only for the proposition that "the Act precludes direct access to the circuit courts for redress of civil rights violations." *Board of Trustees of the Police Pension Fund of the City of Urbana v. Illinois Human Rights Comm'n*, 490 N.E.2d 232, 236 (Ill. App. 1986). *Mein*, therefore, does not control "where another law directs another body to make a determination which necessarily calls into play the subject matter of 'human rights.' " *Id.* Moreover, several decisions, both before and after *Mein*, suggest that administrative bodies are permitted to consider defenses of discrimination during their hearings. *See, e.g., Welch*, 907 F.2d at 723-25; *Lee*, 685 F.2d at 200; *Police Pension Fund*, 490 N.E.2d at 764; *Coler v. Redd*, 427 N.E.2d 622, 623-24 (Ill. App. 1981); *Strobeck v. Illinois Civil Serv. Comm'n*, 388 N.E.2d 912, 916-17 (Ill. App. 1979); *Fox v. Civil Serv. Comm'n*, 383 N.E.2d 1201, 1204-05 (Ill. App. 1978).

We also disagree with Pirela's claim that he did not have a full and fair opportunity to litigate his discrimination claim before the Board because he lacked adequate discovery. As an "administrative agency" as defined in Ill. Rev. Stat. ch. 110, ¶ 3-101, the North Aurora Board of Police and Fire Commissioners is subject to the provisions of the Illinois Administrative Review Act. Thus, if Pirela had chosen to raise his discrimination defense before the Board, the Board had the power to secure by subpoena the attendance and testimony of witnesses, as well as the production of books and papers relevant to the hearings. Ill. Rev. Stat. ch. 24, ¶ 10-2.1-17. Pirela, as a party to the action, would have had similar powers of discovery. *See Sullivan v. Village of Bensenville*, 524 N E.2d 703, 706 (Ill. App. 1988) (plaintiff made discovery request for subpoena from Board for documents); *Wegmann v. Department of Registration and Educ.*, 377 N.E. 2d 1297, 1301 (Ill. App. 1978) ("the need for discovery at the administrative level is the same, so as to require disclosure by the agency of evidence in its possession which might be helpful to the accused"); *Greco v. State Police Merit Board*, 245 N.E.2d 99, 101-02 (Ill. App. 1969) (production of statements of witnesses is required in an administrative proceeding to allow full presentation and meaningful cross-examination); *Reich v. Board of Fire and Police Comm'rs*, 301 N.E.2d 501, 505 (Ill. App. 1973) (party may subpoena documents relevant to hearing, but not error to deny the subpoena when plaintiff could not establish relevancy of duty reports and service file).

Finally, Pirela argues that he could not have received a full and fair hearing of his discrimination claims because the Board would have refused to consider any defense involving discrimination. In support of this position, he directs our attention to a short exchange found in the record:

> Q. [MR. MCGUIRE] Officer Pirela, you made reference to being the only black on the North Aurora Police Department; is that correct?
>
> A. Yes.

Q. You are not in any way accusing the chief of police in any way of being anti-black, are you?

A. Partially, yes.

Q. How so, Officer.

A. How So?

Q. Yes.

A. I would like to ask you

Q. Just direct your answer to the three commissioners, if you will.

A. First off, there are several officers on this police department that have been suspended for several different reasons, for [sic] more serious than the chief has ever brought upon against myself. When I was suspended in October, Officer Sawyer was suspended after

MR. MCGUIRE: Mr. Chairman, I will withdraw the question. It's not responsive.

MR. COOK: I think it's too late to withdraw the question. He has made an inference from the question.

MR. MCGUIRE: I will withdraw the question. The answer is not responsive.

MR. BROIHIER: Do you have any other questions of this witness?

MR. MCGUIRE: Yes, I do. I would also ask, as a matter of fact, that the question has been withdrawn and the answer is not responsive to the question and the answer be stricken.

MR. MONACO: Strike the answer.

MR. MCGUIRE: Thank you.

MR. MORELLI: May the record reflect that it is our position that, having asked the question, the witness is now entitled to answer. I realize that you have ruled, but I want to make the record complete.

Report of Proceedings before the Police and Fire Commissioners, pp. 22-24 (May 17, 1986). What Pirela fails to point out is that this discussion occurred during cross-examination by counsel for the Village. He had previously made no attempt to introduce any testimony concerning racial discrimination at his hearing nor did he make any further efforts to show his termination was racially motivated.

In any event, there can be little dispute that Pirela's discrimination claims would have been "relevant and admissible in proceedings . . . [for] determining whether there was 'cause' for a discharge." *See, e.g., Welch*, 907 F.2d at 724; *Jones v. City of Alton*, 757 F.2d 878, 882 (7th Cir. 1985). Illinois courts have "a duty, under the Administrative Review Act, to ensure that due process and an impartial adjudication were afforded in the administrative hearing." *Lee*, 685 F.2d at 201 (citing *Reich v. City of Freeport*, 527 F.2d 666, 671 (7th Cir. 1975)). Thus, the state court could have heard Pirela's claim or remanded his case to the Board for further proceedings. *Id.*; *Wilson v. City of Markham*, 563 N.E.2d 941, 944 (Ill. App. 1990). As the transcript of the Board hearing reveals, Pirela preserved the issue of the Board's failure to consider his testimony concerning discrimination. Nevertheless, while he could have challenged the Board's refusal to hear his testimony concerning racial discrimination, he did not. His failure to litigate his discrimination claims either before the Board or on administrative review in the state circuit court "does not insulate [his] claims from the effects of *res judicata*." *Welch*, 907 F.2d at 725; *see also Kremer*, 456 U.S. at 485, 102 S. Ct. at 1899 (a plaintiff's failure "to avail himself of the full procedures provided by state law does not constitute a sign of their inadequacy"). We therefore conclude that Pirela had a full and fair opportunity to litigate any claims that the Village's termination and suspension practices were discriminatory.

III.

For the foregoing reasons, the district court's grant of summary judgment is affirmed, except for the parts of Pirela's complaint that allege that the defendant discriminatorily denied him promotions and salary. The summary judgment with respect to those claims is reversed and remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART AND REVERSED IN PART.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT – WITH ORAL ARGUMENT

Date: June 28, 1991

BEFORE: Honorable Richard A. Posner, Circuit Judge
Honorable Joel M. Flaum, Circuit Judge
Honorable Michael S. Kanne, Circuit Judge

No. 89-1231

PABLO F. PIRELA,

Plaintiff-Appellant

v.

VILLAGE OF NORTH AURORA,

Defendant-Appellee

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 87 C 4981, Judge George M. Marovich

This cause was heard on the record from the above mentioned district court, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the District Court in this cause appealed from be, and the same is hereby, AFFIRMED in part and REVERSED in part, in accordance with the opinion of this Court filed this date. Each party shall bear their own costs.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 87 C 4981 Date: 1/4/89

Name of Assigned Judge: GEORGE M. MAROVICH

Case Title: PABLO F. PIRELA v.
VILLAGE OF NORTH AURORA

* * * * *

DOCKET ENTRY:

(1) ☒ Judgment is entered as follows:

(2) ☐ [Other docket entry:]

Motion of defendant's for summary judgment is granted.

* * * * *

(12) ☒ (For further detail see ☒ order on the reverse of the original minute order form.)

* * * * * *

(*Reverse Side*)

ORDER

Defendant's motion for summary judgment is granted. The doctrine of *res judicata* bars relitigation of claims that were made or could have been made in a prior suit. *See Lee v. City of Peoria*, 685 F.2d 196 (7th Cir. 1982). Plaintiff in this case was already afforded an administrative

hearing concerning his discharge from defendant's employ. At that hearing, plaintiff could have raised any alleged racial discrimination by defendant. Plaintiff appealed the administrative determination to state circuit court. The state court affirmed plaintiff's dismissal. That decision is *res judicata* to the present discrimination case. *Button v. Harden*, 814 F.2d 382 (7th Cir. 1987).

Plaintiff argues that his federal claim is based on other instances of alleged misconduct irrelevant to the issues before the administrative board. The court disagrees. Plaintiff's complaint alleges an ongoing discriminatory practice by the Village of North Aurora culminating in plaintiff's dismissal. The alleged incidents of discriminatory treatment by the police chief and Village of North Aurora were relevant to the complaint before the board. Thus, plaintiff should have raised his discrimination claims before the board or on appeal in the circuit court.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 87 C 4981 Date: 3/4/88

Name of Assigned Judge: WILLIAMS

Case Title: PIRELA v. VILLAGE OF NORTH AURORA

* * * * *

DOCKET ENTRY:

(1) ☐ Judgment is entered as follows:

(2) ☒ [Other docket entry:]

Pursuant to memorandum opinion and order entered this day, the court dismisses Count III of plaintiff's complaint. The parties are directed to submit briefs in accordance with the schedule set in this opinion so that this motion may be resolved under Rule 56. Status hearing set for March 11, 1988 to stand.

* * * * *

(12) ☒ (For further detail see ☒ order attached to the original minute order form.)

* * * * *

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PABLO PIRELA,	)	
	)	
Plaintiff,	)	
v.	)	No. 87 C 4981
	)	
VILLAGE OF NORTH AURORA,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

The plaintiff Pablo Pirela filed a three count complaint alleging that the defendant Village of North Aurora ("Village") discriminated against him on the basis of his race and national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e(1)-2000e(17) ("Title VII"), 42 U.S.C. § 1981, and 29 U.S.C. § 206(d) ("Equal Pay Act"). The defendant moves this court to dismiss the plaintiff's complaint for failure to state a claim for which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). The court grants the following relief.

The plaintiff alleges the following facts in his complaint. The plaintiff, who is a dark skinned Puerto Rican, was employed as a police officer for North Aurora from May 25, 1984 until his discharge on May 27, 1986. In Counts I and II of the complaint, the plaintiff states that he was discriminated against with respect to the terms, wages, conditions, privileges, advantages, and benefits of his employment. The Village also discriminated against Pirela when it denied him promotions to juvenile officer in June,

1984 and to head juvenile officer in August, 1985. These positions were given to less experienced white employees. In Count III, the plaintiff further states that he was discriminated against with respect to wages in violation of the Equal Pay Act. Pirela filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") within 120 days of the commission of the unlawful employment practices and received a notice of a right to sue.

When ruling on a motion to dismiss pursuant to Rule 12(b)(6), the court must "take the allegations in the complaint to be true and view them, along with the reasonable inferences to be drawn from them, in the light most favorable to the plaintiff." *Ellsworth v. City of Racine*, 774 F.2d 182, 184 (7th Cir. 1985), *cert. denied*, 475 U.S. 1047 (1986). A complaint should be dismissed only when "it appears beyond doubt that the plaintiff is unable to prove any set of facts which would entitle plaintiff to relief." *Id.* A "court must construe pleadings liberally, and mere vagueness or lack of detail does not constitute sufficient grounds for a motion to dismiss." *Strauss v. City of Chicago*, 760 F.2d 765, 767 (7th Cir. 1986). The court will first consider the defendant's motion to dismiss Count III of the complaint.

I

Equal Pay Act

In Count III of his complaint, Pirela contends that the defendant violated the Equal Pay Act by discriminating against him with respect to wages. The Equal Pay Act applies only to wage differentials based on sex discrimination. *Ende v. Board of Regency Universities*, 757 F.2d 176, 183 (7th Cir. 1985); *Grumbine v. United States*, 586 F.

Supp. 1144, 1146 (D.D.C. 1984). The statutory language of the Act specifically refers to sex-based discrimination. *See* 29 U.S.C. § 206(d)(1). In this case, the plaintiff alleges discrimination on the basis of race and national origin only. Consequently, Count III is dismissed because the plaintiff failed to include the requisite allegations of sex-based discrimination.

II

Res Judicata

The defendant moves to dismiss Counts I and II on the grounds that the plaintiff's Title VII and § 1981 claims are barred by res judicata. Res judicata, an affirmative defense, is an appropriate ground to dismiss a complaint under Rule 12(b)(6) only if the facts as alleged on the face of the complaint clearly establish it. *See Jones v. O.D. Gann*, 703 F.2d 513, 515 (11th Cir. 1983); *Concordia v. Bendekovic*, 693 F.2d 1073, 1075 (11th Cir. 1982); *Butcher v. United Electric*, 174 F.2d 1003, 1005-06 (7th Cir. 1949); *Griswold v. E.F. Hutton & Co., Inc.*, 622 F. Supp. 1397, 1403 (N.D. Ill. 1985) (Shadur, J.); 2 Wright & Miller, Federal Practice and Procedure § 1357 at 604-10 (1st ed. 1969). In this case, although both parties attached copies of prior pleadings and decisions to their briefs, the plaintiff's complaint makes *no* reference to any prior proceedings. Thus, granting the defendant's motion to dismiss Counts I and II on the grounds of res judicata would be inappropriate.

The court will, however, exercise its discretion to convert this portion of the defendant's Rule 12(b)(6) motion into a Rule 56 motion for summary judgment. *See* Fed. R. Civ. P. 12(b)(6); *Crawford v. United States*, 796 F.2d 924, 927 (7th Cir. 1986). The plaintiff is given fourteen

(14) days from the entry of this order to submit a response as well as any material pertinent to the disposition of this matter under Rule 56. The defendant is directed to file a reply within twenty-one (21) days of the entry of this order.

Conclusion

For the foregoing reasons, the court dismisses Count III of the plaintiff's complaint. The parties are directed to submit briefs in accordance with the above schedule so that this motion may be resolved under Rule 56.

ENTER:

/s/ ANN CLAIRE WILLIAMS
Ann Claire Williams, Judge
United States District Court

Dated: MAR 4, 1988

APPENDIX D

CIRCUIT COURT
FOR THE 16TH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

MAR 26, 1987

GEN. NO. 86 MR KA 0173
☐ JURY ☒ NON-JURY

Pablo Pirela & Stephen Adams,
PLAINTIFF (S)

vs.

Edward Kelly and
The Board of Fire & Police Commissioners
of The Village of North Aurora
DEFENDANT (S)

Judge: Michael J. Colwell
Pltf. Atty.: Morelli & Simpson
Deft. Atty.: John C. Broihier
John Kelly

ORDER

This matter coming on for oral argument and final determination re Plaintiff's Complaint for administrative review, this Court having heard the arguments of counsel, having reviewed the pleadings, the record of the administrative proceedings and the memorandum of counsel filed herein and otherwise being fully informed in the premises

HEREBY ORDERS that the decision of the Defendant Board of Fire and Police Commissioners is not contrary to the manifest weight of the evidence that cause for discharge of the Plaintiffs exist and it is further Ordered that Defendants Findings and Decision is hereby affirmed. There is no just reason to delay enforcement of this order.

3-26-87

/s/ MICHAEL J. COLWELL
Judge

APPENDIX E

BEFORE THE BOARD OF
FIRE AND POLICE COMMISSIONERS OF THE
VILLAGE OF NORTH AURORA, ILLINOIS

IN THE MATTER OF THE CHARGES AGAINST PABLO PIRELA AND STEPHEN ADAMS, POLICE OFFICERS OF THE VILLAGE OF NORTH AURORA, ILLINOIS	))))))	MR KA 86 0173

FINDINGS AND DECISION

THIS MATTER comes on to be heard by the undersigned Board of Fire and Police Commissioners of the Village of North Aurora, Illinois upon the filing of written charges against Police Officers PABLO PIRELA and STEPHEN ADAMS (hereinafter referred to as "Respondents"), by Police Chief EDWARD KELLY (hereinafter referred to as "Complainant"), wherein said Respondents were charged with violating certain rules and regulations of the North Aurora Police Department. A copy of said Charges is incorporated herein by reference. This Board commenced a public hearing on said Charges on April 24, 1986, said hearing being continued from time to time, pursuant to notice as required by law, and, having heard and reviewed the testimony and other evidence presented at said hearings, and after due deliberation and being fully advised in the premises, FINDS:

1. Respondents were at all times mentioned herein and pertaining hereto police officers of the Police Department of the Village of North Aurora, Illinois, assigned to duties as patrol officers.

2. The Complainant filed Charges against the Respondents herein consisting of six separate allegations of misconduct and various violations of the rules and regulations of the North Aurora Police Department all on the dates and as specified in the subject Charges which have been incorporated herein.

3. On the motion of the Complainant, Count VI of the Charges was amended changing the date specified in Paragraph 3 of said Count VI from February 26, 1986 to February 12, 1986.

4. This Board has jurisdiction of the subject matter of said Charges and the persons of the parties hereto.

5. All notices and other things required to be done prior to delivery and after said hearings have been done.

6. Throughout the hearings, both the Respondents and Complainant appeared in person and were represented by legal counsel of their own selection. All witnesses were sworn in, testified under oath and were subject to cross-examination.

7. At the conclusion of the hearings this Board of Fire and Police Commissioners found that the Complainant had met his burden of proof and that the Respondents were guilty of the misconduct as alleged in Counts I, II, III, IV and VI of the Charges. The Board found that the Complainant had not met his burden of proof and that the Respondent, Pablo Pirela, was not guilty of the alleged misconduct cited in Count V of the Charges.

8. Count V alleges that on or about February 18, 1986, the Respondent, Pablo Pirela, did strike Carolyn Doran, an individual who made a statement to the North Aurora Police Department re an incident occurring on February 7, 1986 (said incident being the subject matter of Count

I herein). Count V alleges that the striking of Ms. Doran was related to the statement she made to the North Aurora Police Department. The evidence shows, by a preponderance, that on or about February 18, 1986, at approximately 5:30 p.m.-6:45 p.m., both the Respondent and Ms. Doran were present at a tavern known as Miss Dottie's located in North Aurora, Illinois. During the course of the late afternoon, early evening, both Pirela and Ms. Doran did discuss her prior statement given to the North Aurora Police Department re a certain incident involving the Respondents herein. The evidence further shows that Ms. Doran was in the company of her boyfriend, Angelo Negron and his brother, Steve Negron. The testimony of Ms. Doran and Respondent Pirela shows that later that same evening, Steve Negron and Pirela's father had been playing pool when an argument between the two individuals ensued. Subsequently, Respondent Pirela and Steve Negron were involved in an altercation in a hallway leading to the upper floor of Ms. Dottie's Lounge. Ms. Doran was present in the hallway and it was at such time that she was struck. There is conflicting testimony in that Ms. Doran testified that she was struck by Respondent Pirela while the Respondent testified that he did not strike her and two of Respondent's witnesses, a Dorothy Negre and Carmella Jones, testified that Ms. Doran was struck by another individual. Dorothy Negre testified that Ms. Doran was struck by Steve Negron while Carmella Jones testified that Ms. Doran was struck by her boyfriend, Anthony Negron.

More importantly, Ms. Doran, when asked whether her being struck in the eye was related to her prior discussion with Pirela of the events which occurred on February 7, 1986 (Charge I) or the then pending altercation between the Respondent Pirela and her brother's boyfriend, stated

that she was struck as Pirela and Negron were arguing. This Board therefore concludes that, even if Pablo Pirela had struck Ms. Doran on the date in question, that incident was not related to Ms. Doran's statement to the North Aurora Police Department re another incident involving the Respondent which occurred on February 7, 1986. The manifest weight of the evidence leads the Board to the conclusion that Ms. Doran was struck after involving herself in an ongoing altercation between the Respondent and another patron of Ms. Dottie's. The Board, therefore, finds and determines that the Respondent, Pablo Pirela, is not guilty of the misconduct alleged in Count V of the Charges.

9. Count I of the Charges alleges that the Respondents, Pirela and Adams, on February 7, 1986, while under the influence of alcoholic beverages, became involved in an altercation with Shaun Wilson at Miss Dottie's Lounge and that said Respondents concealed themselves from uniformed North Aurora police officers when same were called to the subject lounge. The manifest weight of the evidence shows that, on or about February 7, 1986, from the hours of approximately 4:30 p.m. until 9:00 p.m., both Respondents were present at Miss Dottie's Lounge and that said Respondents were shooting pool and drinking.

With respect to the evening of February 7, 1986, four witnesses, a Ms. Olvera, Ms. Doran, Mrs. Negre and a Ms. Jones all testified that the Respondents were at Miss Dottie's Lounge and were known to them to be members of the North Aurora Police Department. The Respondent, Pablo Pirela, testified that, on the night in question, he had three (3) vodka and seven-ups and that he saw Respondent Adams drinking beer. Witness Olvera testified that she had seen Pirela with a beer bottle earlier and later heard him order a mixed drink. She also testified

that she saw Adams drinking from a beer bottle. Carol Doran testified that she was present at Miss Dottie's on February 7, 1986 and had observed Respondent Pirela drink approximately five (5) beers and two mixed drinks. Ms. Doran, who testified that she was seated at a table in the area where Respondents Pirela and Adams were shooting pool, also testified that she had observed Respondent Adams drink approximately six (6) beers and two mixed drinks which were light brown in color. Ms. Doran testified that the Respondents were playing pool, that the loser bought the winner a beer and that Respondent Adams had lined up six beers on a shelf near the pool table.

The manifest weight of the evidence shows that the Respondents, later on February 7, 1986, at approximately 8:30-8:45 p.m., became involved in an altercation with another patron of the lounge—said patron being known as Shaun Wilson. While a question exists as to exactly how the altercation commenced, Ms. Olvera testified that she saw Respondent Adams with his hand on the shoulder of Shaun Wilson and Respondent Pirela was shoulder to shoulder with Wilson. Olvera testified that Pirela and Adams left the bar and went outside into the parking lot. She overheard a conversation between Adams and Pirela wherein Adams stated that "I want his ass" and "let's go in and bring his ass out here." Olvera then testified that Respondents returned to the lounge at which time she observed Adams holding Wilson against the wall with his (Adams') elbow against his neck. The witness further testified that Pirela was holding Wilson's arms. As a result of the aforementioned altercation, Olvera testified that a 911 call was made to the North Aurora Police Department. Ms. Doran also testified that she had observed Pirela and Adams arguing with Shaun Wilson.

Police Officer Steve Fetzer, a patrolman for the North Aurora Police Department, testified that he and fellow officer, George Raddick, responded to a call for police assistance at Miss Dottie's Lounge at approximately 8:40 p.m. on February 7, 1986. When Officer Fetzer arrived at Miss Dottie's Lounge, he did not observe the Respondents on the premises. He was then led upstairs by a Mr. Lou Nigre. When he reached the upper level, Officer Fetzer testified that all the lights were out. When Mr. Nigre turned the lights on the Respondents came forward (jumped out) and shouted. When Respondent Adams was asked what he and Pirela were doing up there, he answered that they "were hiding and did not want to see Sergeant White", a supervisor employed by the North Aurora Police Department. Officer Fetzer testified that Respondent Adams had admitted punching Shaun Wilson.

Officer Fetzer testified that he had been a police officer for approximately two years, had arrested a number of individuals for driving under the influence of intoxicants and that in his, Officer Fetzer's opinion, both Adams and Pirela were under the influence of alcoholic beverages when he observed them at Miss Dottie's Lounge. In support of his opinion, Officer Fetzer testified that he observed Respondent Pirela swaying, that there was a strong odor of alcohol on his breath, that his eyes were glassy and dilated and that he was slurring his words. Officer Fetzer went on to say that he had observed Respondent Pirela intoxicated on other occasions, that he had a tendency to spit while talking in those instances and that, when he observed him on the night in question, he, Respondent Pirela, was spitting while talking. With respect to Respondent Adams, Officer Fetzer testified that he was slurring his words, he was swaying and had a strong odor of alcohol on his breath.

Based on the foregoing, this Board finds and determines that the Respondents are guilty of the misconduct alleged in Count I of the Charges and that said conduct is violative of the Rules and Regulations of the North Aurora Police Department, Sections 13.23 and 13.1 as set forth below:

> "13.23 Department personnel shall avoid actions which give the appearance of impropriety.
>
> "13.1 Officers and civilians shall conduct themselves in their private and professional lives in such a manner as to avoid bringing themselves or the department into disrepute."

10. Count II of the Charges alleges that at approximately 11:00 p.m. on February 7, 1986, Respondents Pirela and Adams commenced a tour of duty as patrol officers of the North Aurora Police Department while under the influence of alcoholic beverages. The evidence shows, as set forth in 9 above, that the Respondents had been at Miss Dottie's Lounge from approximately 4:30 p.m. until approximately 9:00 p.m. on the evening of February 7, 1986 and that said Respondents had been drinking. It was the testimony of Police Officer Fetzer that, when he observed them, the Respondents, at approximately 8:45 p.m. that evening, that said Respondents were under the influence.

Witness Fetzer further testified that he was on duty and present at the North Aurora Police Department when Respondents Pirela and Adams commenced their tour of duty at approximately 11:00 p.m. on February 7, 1986. He testified that Respondent Pirela was the first to report and that as he, Pirela, arrived, he was shouting and appeared to be hyperactive. Fetzer stated that Pirela shouted that no one could tell him how to spend his off-duty time and that he (Pirela) still appeared to be drunk

inasmuch as he was slurring his words, spitting while he was talking and swaying.

According to the evidence, Respondent Adams reported shortly after Pirela. Officer Fetzer testified that, as Adams used the microphone at the desk to put himself into service, he was slurring his words. Adams then went over near Chief Kelly's, office spit on the door and said "Fuck you Kelly." He then proceeded to Sergeant White's desk, spit on the desk, took Sergean White's name tag from the desk and threw it in the wastebasket. He said "Fuck you White, you son of a bitch" and then took the police department's current warrant list and tore it up. Respondent Adams admitted that he did spit on the door and the desk, that he threw the name tag into the wastebasket and tore up the warrent list, adding that he did so as a joke. Fetzer further testified that when Respondent Pirela was using the radio to go into service, he, Pirela, was still slurring his words and Respondent Adams was standing immediately behind Pirela yelling and screaming while Pirela was transmitting.

Shortly thereafter, the department received a call for police assistance at the Fair Lanes Valley Bowl in North Aurora and the witness Fetzer as well as the Respondents, Pirela and Adams, responded to the call with each officer driving a North Aurora police vehicle to the scene. Officer Fetzer also stated that he had observed the Respondent Pirela driving a police vehicle, at least three times, during Pirela's tour of duty on the evening in question and that the vehicle of Pirela was seen weaving on the road.

Based on the foregoing, this Board finds and determines that the Respondents are guilty of the misconduct alleged in Count II of the Charges and that said conduct is violative of the rules and regulations of the North Aurora

Police Department, Sections 13.1 and 13.22 as set forth below:

> "13.23 Department personnel shall avoid actions which give the appearance of impropriety.
>
> "13.1 Officers and civilians shall conduct themselves in their private and professional lives in such a manner as to avoid bringing themselves or the department into disrepute."

11. Count III of the Charges alleges that the Respondent, Stephen Adams, on February 7, 1986, at approximately 11:00 p.m., did curse Chief Edward Kelly and Sergeant White, his superiors, on the North Aurora Police Department, and that he also spit on the door of Chief Kelly, spit on the desk of Sergeant White, threw Sergeant White's name tag in the wastebasket and tore up a warrant list belonging to said police department. Given the testimony of Police Officer Fetzer cited in 10. above and the admission of the Respondent as to said acts, this Board finds and determines that the Respondent, Stephen Adams, is guilty of the misconduct alleged in Count III of the Charges and that said conduct is violative of the Rules and Regulations of the North Aurora Police Department, Sections 13.23 and 13.1 as set out in 10. above.

12. Count IV of the Charges alleges that the Respondent Pablo Pirela, while on duty on February 7, 1986, did return keys to an intoxicated individual at the Fair Lanes Valley Bowl, who then proceeded to his motor vehicle which was in the bowling alley parking lot. The manifest weight of the evidence shows that, at approximately 11:00 p.m. on February 7, 1986, Respondent Pirela, Police Officer Fetzer and Respondent Adams, responded to a call for assistance at the Fair Lanes Valley Bowl in North Aurora. Officer Fetzer remained outside the bowling alley with a large, white male who was suspected of being in-

volved in a physical altercation at said bowling alley. Officer Fetzer had observed the white male suspect and, in his opinion, that individual was under influence in that he was having a difficult time standing up, that there was the odor of alcohol on his breath, and he was slurring his words. Officer Fetzer testified that, after the disturbance had quieted, Respondent Pirela gave the intoxicated individual the keys to his (the white male suspect) motor vehicle which Pirela had obtained from the female companion of said individual. The keys were returned in the presence of several spectators who had gathered to observe the matter. Respondent Pirela admits to returning the keys but testified that, in his opinion, the individual in question was not intoxicated.

Based on the foregoing, this Board finds and determines that the Respondent Pablo Pirela, is guilty of the misconduct as alleged in Count IV of the Charges, said conduct being violative of the rules and regulations of the North Aurora Police Department, Sections 12.13 and 13.1 as set forth below:

> "12.13. "Any officer of the department who shall in the performance of his official duties display reluctance to properly perform his assigned duties or who acts in a manner tending to bring discredit upon himself or the department or who fails to assume responsibility or exercise diligence, intelligence, and interest in the pursuit of his duties or whose actions or performance in a position, rank, or assignment are below acceptable standards may be deemed incompetent and shall be subject to disciplinary action."
>
> "13.11. Officers and civilians shall conduct themselves in their private and professional lives in such a manner as to avoid bringing themselves or the department into disrepute."

13. In Count VI of the Charges, as amended, it is alleged that the Respondent, Pablo Pirela, remained in a liquor establishment located in the Village of North Aurora beyond the lawful closing time of said establishment and was seen exiting said liquor establishment carrying a six-pack of beer at approximately 1:30 a.m. on February 12, 1986.

The evidence shows that the Village of North Aurora has an Ordinance, Complainant's Exhibit 2, which requires liquor establishments such as Miss Dottie's Lounge to close for business as of 1:00 a.m. on the date in question. By said Ordinance, patrons of such an establishment are not to be on the premises beyond the 1:00 a.m. time set for closing.

Sergeant White testified that on February 12, 1986, based on a tip provided to him, he parked in close proximity to Miss Dottie's Lounge in an effort to apprehend a Ms. Olvera who was suspected to be driving on a suspended license. He testified that there were several cars parked behind Miss Dottie's Lounge including that of Ms. Olvera. At approximately 1:30 a.m., Sergeant White observed Ms. Olvera exiting Miss Dottie's Lounge along with four or five other people including the Respondent, Pablo Pirela, who was carrying a six-pack of beer. Sergeant White testified that he then followed Ms. Olvera who had driven away in her vehicle, stopped her for driving on a suspended license and for expired license plates.

Respondent, Pablo Pirela, testified that he purchased the beer before 1:00 a.m. and that he remained on the premises after the time set for closing to talk to Dorothy Nigre, the bartender. He further testified that there were others present in the lounge, some of whom were not involved in closing and/or cleaning up the tavern and that no one was drinking.

Based on the foregoing, this Board finds and determines that the Respondent, Pablo Pirela, is guilty of misconduct as alleged in Count VI of the Charges and that said conduct is violative of the rules and regulations of the North Aurora Police Department, Sections 13.23 and 13.1 as specified in 12 above.

WHEREFORE, this Board also finds and determines that the Respondents' various acts of misconduct constitutes a substantial shortcoming which renders their continuance in office or employment detrimental to the discipline and efficiency of the North Aurora Police Department and which the law and sound public policy recognizes as good cause for their discharge.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Respondents, PABLO PIRELA and STEPHEN ADAMS, be and are hereby discharged and removed from their position as Patrolmen and members of the Police Department of the Village of North Aurora, Illinois, and from the service and employ of said municipality. The Chief of the Police Department and other village personnel are hereby directed to implement these Findings and Decision forthwith.

Dated at North Aurora, Illinois, this 27th day of May, 1986.

/s/ RICHARD A. MONACO
/s/ R. JEFF ROGERSON
/s/ LEO PARKE
Being all the members of the Fire and Police Commissioners of the Village of North Aurora, Illinois

APPENDIX F

Title VII

* * * * *

§ 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

* * * * *

§ 2000e-3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

* * * * *

§ 2000e-4. Equal Employment Opportunity Commission

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, * * *

* * * * *

§ 2000e-5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization,

or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful

employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)[1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter

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[1] So in original. Probably should be subsection "(b)".

period is requested, to act under such State or local law to remedy the practice alleged.

* * * * *

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

* * * * *

§ 2000e-8. Investigations

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e-5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

* * * * *

APPENDIX G

Chapter 68 — Human Rights

ARTICLE 1. TITLE, POLICY AND DEFINITIONS

1-101. Short title

§ 1-101. Short Title. This Act shall be known and may be cited as the Illinois Human Rights Act.

1-102. Declaration of policy

§ 1-102. Declaration of Policy. It is the public policy of this State:

(A) Freedom from Sexual Harassment in Employment, Unlawful Discrimination and Sexual Harassment in Higher Education. To secure for all individuals within Illinois the freedom from discrimination because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations; and to prevent sexual harassment in employment and sexual harassment in higher education.

(B) Public Health, Welfare and Safety. To promote the public health, welfare and safety by protecting the interest of all people in Illinois in maintaining personal dignity, in realizing their full productive capacities, and in furthering their interests, rights and privileges as citizens of this State.

(C) Implementation of Constitutional Guarantees. To secure and guarantee the rights established by Sections 17, 18 and 19 of Article I of the Illinois Constitution of 1970.

(D) Equal Opportunity, Affirmative Action. To establish Equal Opportunity and Affirmative Action as the policies of this State in all of its decisions, programs and activities, and to assure that all State departments, boards, commis-

sions and instrumentalities rigorously take affirmative action to provide equality of opportunity and eliminate the effects of past discrimination in the internal affairs of State government and in their relations with the public.

(E) Unfounded Charges. To protect citizens of this State against unfounded charges of sexual harassment in employment, unlawful discrimination and sexual harassment in higher education.

1-103. General definitions

* * * * *

(B) Aggrieved Party. "Aggrieved party" means a person who is alleged or proved to have been injured by a civil rights violation.

(C) Charge. "Charge" means an allegation filed with the Department by an aggrieved party or initiated by the Department under its authority.

(D) Civil Rights Violation. "Civil rights violation" includes and shall be limited to only those specific acts set forth in Sections 2-102, 2-103, 3-102, 3-103, 3-104, 3-104.-1, 3-105, 4-102, 4-103, 5-102, 5A-102 and 6-101 of this Act.

(E) Commission. "Commission" means the Human Rights Commission created by this Act.

(F) Complaint. "Complaint" means the formal pleading filed by the Department with the Commission following an investigation and finding of substantial evidence of a civil rights violation.

(G) Complainant. "Complainant" means a person who files a charge of civil rights violation with the Department.

(H) Department. "Department" means the Department of Human Rights created by this Act.

* * * * *

(Q) Unlawful Discrimination. "Unlawful discrimination" means discrimination against a person because of his or her race, color, religion, national origin, ancestry, age,

sex, marital status, handicap or unfavorable discharge from military service as those terms are defined in this Section.

* * * * *

ARTICLE 2. EMPLOYMENT

2-101. Definitions

§ 2-101. Definitions. The following definitions are applicable strictly in the context of this Article.

(A) Employee. (1) "Employee" includes:

(a) Any individual performing services for remuneration within this State for an employer;

* * * * *

(B) Employer. (1) "Employer" includes:

* * * * *

(c) The state and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees;

* * * * *

2-102. Civil rights violations—Employment

§ 2-102. Civil Rights Violations—Employment. It is a civil rights violation:

(A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination.

* * * * *

ARTICLE 6. ADDITIONAL CIVIL RIGHTS VIOLATIONS

6-101. Additional civil rights violations

§ 6-101. Additional Civil Rights Violations. It is a civil rights violation for a person, or for two or more persons to conspire, to:

(A) Retaliation. Retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be sexual harassment in employment, unlawful discrimination or sexual harassment in higher education or has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act;

* * * * *

ARTICLE 7. DEPARTMENT OF HUMAN RIGHTS; DUTIES; PROCEDURES

7-101. Powers and duties

§ 7-101. Powers and Duties. In addition to other powers and duties prescribed in this Act, the Department shall have the following powers:

(A) Rules and Regulations. To adopt, promulgate, amend, and rescind rules and regulations not inconsistent with the provisions of this Act pursuant to the Administrative Procedure Act.[1]

(B) Charges. To issue, receive, investigate, conciliate, settle, and dismiss charges filed in conformity with this Act.

(C) Compulsory Process. To request subpoenas as it deems necessary for its investigations.

(D) Complaints. To file complaints with the Commission in conformity with this Act.

(E) Judicial Enforcement. To seek temporary relief and to enforce orders of the Commission in conformity with this Act.

(F) Equal Employment Opportunities. To take such action as may be authorized to provide for equal employment opportunities and affirmative action.

(G) Recruitment; Research; Public Communication; Advisory Councils. To engage in such recruitment, research and public communication and create such advisory councils as may be authorized to effectuate the purposes of this Act.

(H) Coordination with Federal and Local Agencies. To coordinate its activities with federal and local agencies in conformity with this Act.

(I) Public Grants; Private Gifts. To accept public grants and private gifts as may be authorized.

[1] Chapter 127, ¶ 1001 et seq.

7-102. Procedures

§ 7-102. Procedures. **(A) Charge.** (1) Within 180 days after the date that a civil rights violation allegedly has been committed, a charge in writing under oath or affirmation may be filed with the Department by an aggrieved party or issued by the Department itself under the signature of the Director.

(2) The charge shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged civil rights violation.

(B) Notice. The Department shall, within ten days of the date on which the charge was filed, serve a copy of the charge on the respondent, and shall send written notice to the complainant informing the complainant of his or her option to file a complaint with the Human Rights Commission under subparagraph (2) of paragraph (G), including in such notice the dates within which the complainant may exercise such option. This time period shall not be construed to be jurisdictional.

(C) Investigation. (1) After the respondent has been notified, the Department shall conduct a full investigation of the allegations set forth in the charge.

(2) The Director or his or her designated representatives shall have authority to request any member of the Commission to issue subpoenas to compel the attendance of a witness or the production for examination of any books, records or documents whatsoever.

(3) If any witness whose testimony is required for any investigation resides outside the State, or through illness

or any other good cause as determined by the Director is unable to be interviewed by the investigator or appear at a fact finding conference, his or her testimony or deposition may be taken, within or without the State, in the same manner as is provided for in the taking of depositions in civil cases in circuit courts.

(4) Upon reasonable notice to the complainant and the respondent, the Department may conduct a fact-finding conference. The fact-finding conference shall be held within 120 days of the date on which a charge has been filed unless this time limitation is waived by the parties in writing. A party's failure to attend the conference without good cause may result in dismissal or default. A notice of dismissal or default shall be issued by the director and shall notify the relevant party that a request for review may be filed in writing with the Commission within 30 days of receipt of notice of dismissal or default.

(D) **Report.** (1) Each investigated charge shall be the subject of a report to the Director. The report shall be a confidential document subject to review by the Director, authorized Department employees, the parties, and, where indicated by this Act, members of the Commission or their designated hearing officers.

(2) Upon review of the report, the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed.

(a) If the Director determines that there is no substantial evidence, the complaint shall be dismissed and the complainant notified that he or she may seek review of the dismissal order before the Commission. The complainant shall have 30 days from receipt of notice to file a request for review by the Commission.

(b) If the Director determines that there is substantial evidence, he or she shall designate a Department employee who is an attorney licensed to practice in Illinois to endeavor to eliminate the effect of the alleged civil rights violation and to prevent its repetition by means of conference and conciliation.

(E) Conciliation. (1) When the Department determines that a formal conciliation conference is necessary, the complainant and respondent shall be notified of the time and place of the conference by registered or certified mail at least 10 days prior thereto and either or both parties shall appear at the conference in person or by attorney.

(2) The place fixed for the conference shall be within 35 miles of the place where the civil rights violation is alleged to have been committed.

(3) Nothing occurring at the conference shall be disclosed by the Department unless the complainant and respondent agree in writing that such disclosure be made.

(F) Complaint. (1) When there is a failure to settle or adjust any charge through conciliation, the Department shall prepare a written complaint, under oath or affirmation, stating the nature of the civil rights violation substantially as alleged in the charge previously filed and the relief sought on behalf of the aggrieved party.

(2) The complaint shall be filed with the Commission.

(G) Time Limit. (1) When a charge of a civil rights violation has been properly filed, the Department, within 300 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued. Any such order shall be duly served upon both the complainant and the respondent.

(2) Within 30 days of the expiration of the 300-day period or such longer period as shall have been agreed upon pursuant to subparagraph (1), the aggrieved party may file a complaint with the Commission, if the Department has not sooner filed a complaint or ordered that no complaint be issued. The form of the complaint shall be in accordance with the provisions of paragraph (F). The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the

complaint is filed with the Commission. Upon such notice, the Department shall cease processing the charge.

7-103. Settlement

§ 7-103. Settlement. **(a) Circumstances.** A settlement of any charge prior to the filing of a complaint may be effectuated at any time upon agreement of the parties and the approval of the Department. A settlement of any charge after the filing of complaint shall be effectuated as specified in Section 8-105(A)(2) of this Act.

(B) Form. Settlements of charges prior to the filing of complaints shall be reduced to writing by the Department, signed by the parties, and submitted by the Department to the Commission for approval. Settlements of charges after the filing of complaints shall be effectuated as specified in Section 8-105(A)(2) of this Act.

(C) Violation. (1) When either party alleges that a settlement order has been violated, the Department shall conduct an investigation into the matter.

(2) Upon finding substantial evidence to demonstrate that a settlement has been violated, the Department shall file notice of a settlement order violation with the Commission and serve all parties.

(D) Dismissal For Refusal To Accept Settlement Offer. The Department may dismiss a charge if it is satisfied that:

(1) the respondent has eliminated the effects of the civil rights violation charged and taken steps to prevent its repetition; or

(2) the respondent offers and the complainant declines to accept terms of settlement which the Department finds are sufficient to eliminate the effects of the civil rights violation charged and prevent its repetition.

(3) When the Department dismisses a charge under this Section it shall notify the complainant that he or she may seek review of the dismissal order before the Commission. The complainant shall have 30 days from receipt of notice to file a request for review by the Commission.

7-104. Judicial proceedings

§ 7-104. Judicial Proceedings. **(A) Temporary Relief.** (1) At any time after a charge is filed, the Department may petition the appropriate court for temporary relief, pending final determination of the proceedings under this Act, including an order or judgment restraining the respondent from doing or causing any act which would render ineffectual an order which the Commission may enter with respect to the complainant. The petition shall contain a certification by the Director that the particular matter presents exceptional circumstances in which irreparable injury will result from a civil rights violation in the absence of temporary relief.

(2) The petition shall be filed in the circuit court for the county in which the respondent resides or transacts business or in which the alleged violation took place, and the proceedings shall be governed by Article XI of the "Code of Civil Procedure", approved August 19, 1981,[1] as amended. Except as provided in subsection (A)(3), the court may grant temporary relief or a temporary restraining order as it deems just and proper.

(3) When the petition is based upon a civil rights violation as defined in Article 3 of this Act,[2] the relief or restraining order entered by the court shall not exceed 5 days unless:

(a) A longer period is agreed to by the respondent; or

(b) The court finds that there is substantial evidence to demonstrate that the respondent has engaged in unlawful discrimination.

(B) Enforcement of Commission Orders. When authorized by this Act, the Department, at the request of the Commission, may take whatever action may be authorized for the enforcement of Commission orders.

[1] Chapter 110, ¶ 11-101 et seq.

[2] Paragraph 3-101 et seq. of this chapter.

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7-108. Local departments, commissions

§ 7-108. Local Departments, Commissions. **(A) Authority.** A political subdivision, or two or more political subdivisions acting jointly, may create a local department or commission as it or they see fit to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from sexual harassment in employment, unlawful discrimination and sexual harassment in higher education. The provisions of any ordinance enacted by any municipality or county which prohibits broader or different categories of discrimination than are prohibited by this Act are not invalidated or affected by this Act.

(B) Concurrent Jurisdiction. When the Department and a local department or commission have concurrent jurisdiction over a complaint, either may transfer the complaint to the other under regulations established by the Department.

(C) Exclusive Jurisdiction. When the Department or a local department or commission has jurisdiction over a complaint and the other does not, the Department or local department or commission without jurisdiction may transfer the complaint to the other under regulations established by the Department.

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7-109. Federal departments and agencies

§ 7-109. Federal Departments and Agencies. **(A) Utilization of Department Facilities and Employees.** The Department in its discretion and for the purpose of carrying out its functions, may permit the utilization of its facilities and employees by federal departments and agencies in the investigation of charges over which the Department has jurisdiction. The Department shall be authorized to be reimbursed by the federal government for the reasonable value of such services rendered.

(B) Cooperative Undertakings. In order to effect cooperative undertakings in the reduction of unlawful dis-

crimination, the Department has the power and authority for and on behalf of the state to make contractual agreements, within the scope and authority of this Act, with any agency of the federal government, and such agreements may include provisions under which the federal department or agency shall refrain from processing a charge in Illinois in any cases or class of cases specified in these agreements.

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ARTICLE 8. ILLINOIS HUMAN RIGHTS COMMISSION

8-101. Illinois Human Rights Commission

§ 8-101. Illinois Human Rights Commission. **(A) Creation; Appointments.** The Human Rights Commission is created to consist of 13 members appointed by the Governor with the advice and consent of the Senate. No more than 7 members shall be of the same political party. The Governor shall designate one member as chairperson. All appointments shall be in writing and filed with the Secretary of State as a public record.

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8-102. Powers and duties

§ 8-102. Powers and Duties. In addition to other powers and duties prescribed in this Act, the Commission shall have the following powers:

(A) Meetings. To meet and function at any place within the State.

(B) Offices. To establish and maintain offices in Springfield and Chicago.

(C) Employees. To select and fix the compensation of such technical advisors and employees as it may deem necessary pursuant to the provisions of "The Personnel Code".[1]

(D) Hearing Officers. To select and fix the compensation of hearing officers who shall be attorneys duly licensed to practice law in this State and full time employees of the Commission.

(E) Rules and Regulations. To adopt, promulgate, amend, and rescind rules and regulations not inconsistent with the provisions of this Act pursuant to the Administrative Procedure Act.[2]

(F) Compulsory Process. To issue and authorize requests for enforcement of subpoenas and other compulsory process established by this Act.

(G) Decisions. Through a panel of three members designated by the Chairperson on a random basis, to hear and decide by majority vote requests for review and complaints filed in conformity with this Act and to approve proposed settlements.

(H) Rehearings. To order, by a vote of four members, rehearing of its decisions by the entire Commission in conformity with this Act.

(I) Judicial Enforcement. To authorize requests for judicial enforcement of its orders in conformity with this Act.

(J) Opinions. To publish its decisions in timely fashion to assure a consistent source of precedent.

(K) Public Grants; Private Gifts. To accept public grants and private gifts as may be authorized.

[1] Chapter 127, ¶ 63b101 et seq.

[2] Chapter 127, ¶ 1001 et seq.

8-103. Request for review

§ 8-103. Request for Review. **(A) Jurisdiction.** The Commission, through a panel of three members, shall have jurisdiction to hear and determine requests for review of (1) decisions of the Department to dismiss a charge; and (2) notices of default issued by the Department.

In each instance, the Department shall be the respondent.

(B) Review. When a request for review is properly filed, the Commission may consider the Department's report, any argument and supplemental evidence timely submitted, and the results of any additional investigation con-

ducted by the Department in response to the request. In its discretion, the Commission may designate a hearing officer to conduct a hearing into the factual basis of the matter at issue.

(C) **Default Order.** When a respondent fails to file a timely request for review of a notice of default, or the default is sustained on review, the Commission shall enter a default order and set a hearing on damages.

(D) **Time Period Toll.** Proceedings on requests for review shall toll the time limitation established in paragraph (G) of Section 7-102 from the date on which the Department's notice of dismissal or default is issued to the date on which the Commission's order is entered.

8-104. Compulsory process

§ 8-104. Compulsory Process. (A) **Subpoenas.** Any member of the Commission may issue a subpoena:

(1) At the request of the Department to facilitate its investigation; or

(2) At the request of a party to a proceeding which is the subject of a complaint pending before the Commission.

(B) **Form.** The subpoena shall be on a form prescribed by the Commission in its rules and regulations.

(C) **Content.** A subpoena may be issued when necessary to compel the attendance of a witness or to require the production for examination of any relevant books, records or documents whatsoever.

(D) **Contests.** (1) On motion and for good cause shown the Commission or the hearing officer presiding in the case may quash or modify any subpoena;

(2) In the case of a subpoena duces tecum issued and served at the request of the Department, the Commission or the hearing officer presiding in the case shall upon request order the Department to pay the reasonable expense of producing or providing any item specified in the subpoena.

(E) Enforcement. (1) When anyone fails or refuses to obey a subpoena, the Commission, through a panel of 3 members, shall order the Department to prepare a petition for enforcement in the circuit court of the county in which the person to whom the subpoena was directed resides or has his or her principal place of business.

(2) Not less than five days before the petition is filed in the appropriate court, it shall be served by the Department on the person along with a notice of the time and place the petition is to be presented.

(3) Following a hearing on the petition, the circuit courts shall have jurisdiction to enforce subpoenas issued pursuant to this Section.

(F) Witnesses. (1) If any witness whose testimony is required for hearing resides outside the state, or through illness or any other good cause as determined by the hearing officer is unable to testify at the hearing, his or her testimony or deposition may be taken, within or without the State, in the same manner as is provided for in the taking of depositions in civil cases in circuit courts.

(2) Witnesses subject to subpoena shall be paid the same fees and mileage as are paid witnesses in the circuit courts of this state, and witnesses whose depositions are taken or the person taking them shall be entitled to the same fees as are paid for like services in the circuit courts of this State.

(G) Service of Process. (1) Except as otherwise provided in this Act, complaints, orders and other process and proper papers shall be served in accordance with such rules and regulations as the Commission may from time to time prescribe. The verified return of the individual making service in accordance with this Section and setting forth the manner of such service shall constitute proof of service.

(2) For the purposes of this Act, any documents served upon any officer of a labor organization shall be sufficient to acquire jurisdiction against such labor organization, or

labor union, or voluntary unincorporated union association, and all of its officers, members and representatives.

8-105. Settlement

§ 8-105. Settlement. **(A) Approval.** (1) When a proposed settlement is submitted by the Department, the Commission, through a panel of 3 members, shall determine whether to approve its terms and conditions.

(2) A settlement of any complaint and its underlying charge or charges may be effectuated at any time upon agreement of the parties. Such settlement shall be reduced to writing, signed by parties, and submitted to the Commission for approval. The Commission, through a panel of 3 members, shall determine whether to approve its terms and conditions.

(3) Approval of the settlement shall be accomplished by an order, served on the parties and the Department, in accord with the written terms of the settlement.

(B) Violation. When the Department files a notice of a settlement order violation, the Commission, through a panel of three members, may either order the Department to seek enforcement of the settlement order pursuant to paragraph (B) of Section 8-111 or remand for any type of hearing as it may deem necessary pursuant to paragraph (D) of Section 8-107.

8-106. Hearing on complaint

§ 8-106. Hearing on Complaint. **(A) Services.** Within five days after a complaint is filed by the Department, or the aggrieved party, as the case may be, the Commission shall cause it to be served on the respondent together with a notice of hearing before a hearing officer of the Commission at a place therein fixed.

(B) Time and Location of Hearing. The hearing shall be held not less than thirty nor more than ninety days after service of the complaint at a place that is within one hundred miles of the place at which the civil rights violation is alleged to have occurred. The hearing officer may, for good cause shown, extend the date of the hearing.

(C) **Amendment.** (1) A complaint may be amended under oath by leave of the hearing officer conducting the public hearing, for good cause shown, upon reasonable notice to all interested parties at any time prior to the issuance of an order based thereon;

(2) A motion that the complaint be amended to conform to the evidence, made prior to the close of the public hearing, may be addressed orally on the record to the hearing officer, and shall be granted for good and sufficient cause.

(D) **Answer.** (1) The respondent shall file an answer under oath or affirmation to the original or amended complaint within 30 days of the date of service thereof, but the hearing officer may, for good cause shown, grant further time for the filing of an answer.

(2) When the respondent files a motion to dismiss the complaint within 30 days and the motion is denied by the hearing officer, the time for filing the answer shall be within 15 days of the date of denial of the motion.

(3) Any allegation in the complaint which is not denied or admitted in the answer is deemed admitted unless the respondent states in the answer that he is without sufficient knowledge or information to form a belief with respect to such allegation.

(4) The failure to file an answer is deemed to constitute an admission of the allegations contained in the complaint.

(5) The respondent has the right to amend his answer upon leave of the hearing officer, for good cause shown.

(E) **Proceedings in Forma Pauperis.** (1) If the hearing officer is satisfied that the complainant or respondent is a poor person, and unable to prosecute or defend the complaint and pay the costs and expenses thereof, the hearing officer may permit the party to commence and prosecute or defend the action as a poor person. Such party shall have all the necessary subpoenas, appearances, and proceedings without prepayment of witness fees or charges. Witnesses shall attend as in other cases under this Act

and the same remedies shall be available for failure or refusal to obey the subpoena as are provided for in Section 8-104 of this Act.

(2) A person desiring to proceed without payment of fees or charges shall file with the hearing officer an affidavit stating that he is a poor person and unable to pay costs, and that the action is meritorious.

(F) Discovery. Discovery of information from parties and witnesses shall be available to the parties as in other civil cases in the circuit courts of this State, provided, however, that a party may take discovery depositions only upon leave of the hearing officer and for good cause shown.

(G) Hearing. (1) Both the complainant and the respondent may appear at the hearing and examine and cross-examine witnesses.

(2) The testimony taken at the hearing shall be under oath or affirmation and a transcript shall be made and filed in the office of the Commission.

(3) The testimony taken at the hearing is subject to the same rules of evidence that apply in courts of this State in civil cases.

(H) Compelling Appearance of Parties at Hearing. The appearance at the hearing of a party or a person who at the time of the hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the hearing of documents or tangible things. If the party or person is a non-resident of the county, the hearing officer may order any terms and conditions in connection with his appearance at the hearing that are just, including payment of his reasonable expenses. Upon a failure to comply with the notice, the hearing officer may enter any order that is just.

(I) Decision. (1) When all the testimony has been taken, the hearing officer shall determine whether the respon-

dent has engaged in or is engaging in the civil rights violation with respect to the person aggrieved as charged in the complaint. A determination sustaining a complaint shall be based upon a preponderance of the evidence.

(2) The hearing officer shall make findings of fact in writing and, if the finding is against the respondent, shall issue and cause to be served on the parties and the Department a recommended order for appropriate relief as provided by this Act.

(3) If, upon all the evidence, the hearing officer finds that a respondent has not engaged in the discriminatory practice charged in the complaint or that a preponderance of the evidence does not sustain the complaint, he shall state his findings of fact and shall issue and cause to be served on the parties and the Department a recommended order dismissing the complaint.

(4) The findings and recommended order of the hearing officer shall be filed with the Commission.

(5) A recommended order dismissing a complaint may include an award of reasonable attorneys fees in favor of the respondent if the hearing officer concludes that the complaint was frivolous, unreasonable or groundless or that the complainant continued to litigate after it became clearly so.

8-107. Review by commission

§ 8-107. Review by Commission. **(A) Exceptions.** Within 30 days of the receipt of service of the hearing officer's recommended order, a party may file with the Commission any written exceptions to any part of the order. Exceptions shall be supported by argument and served on all parties at the time they are filed.

(B) Response. Within 21 days of the receipt of service of exceptions, a party may file with the Commission any response to the exceptions. Responses shall be supported by argument and served on all parties at the time they are filed.

(C) Oral Argument. A party may request oral argument at the time of filing exceptions or a response to exceptions. When any party requests oral argument in this manner, the Commission shall schedule oral argument to be heard by a three member panel of Commission members, and shall notify all parties of the time and place of argument. Any party so notified may present oral argument.

(D) Remand. (1) The Commission, on its own motion or pursuant to the written request of any party made at the time of filing exceptions or responses, may remand a case to a hearing officer for purposes of a rehearing to reconsider evidence or hear additional evidence in the matter. The Commission shall issue and serve on all parties a written order remanding the cause and specifying the additional evidence.

(2) The hearing officer presiding at a rehearing shall set a hearing date, in accordance with Section 8-106(B), upon due notice to all parties.

(3) After conclusion of the rehearing, the hearing officer shall file written findings and recommendations with the Commission and serve copies at the same time on all parties in the same manner as provided in Section 8-106(F). The findings and recommendations shall be subject to review by the Commission as provided in this Section.

(E) Review. (1) Following the filing of the findings and recommended order of the hearing officer and any written exceptions and responses, and any other proceedings provided for in this Section, the Commission, through a panel of three members, shall review the record and may adopt, modify or reverse in whole or in part the findings and recommendations of the hearing officer.

(2) The Commission shall adopt the hearing officer's findings of fact if they are not contrary to the manifest weight of the evidence.

(3) The Commission shall file its written order and decision in its office and serve copies on all parties together with a notification of the date when it was filed.

(F) Rehearing. (1) Within 30 days after service of the Commission's order, a party must file an application for rehearing before the full Commission. The application shall be served on all other parties. The Commission shall have discretion to order a response to the application.

(2) Applications for rehearing shall be viewed with disfavor, and may be granted, by vote of four Commission members, only upon a clear demonstration that a matter raises legal issues of significant impact or that three-member panel decisions are in conflict.

(3) When an application for rehearing is granted, the original order shall be nullified and oral argument before the full Commission shall be scheduled. The Commission may request the parties to file any additional written arguments it deems necessary.

(G) Modification of Order. (1) At any time prior to a final order of the court in a proceeding for judicial review under this Act, the Commission or the three-member panel which decided the matter, upon reasonable notice, may modify or set aside in whole or in part any finding or order made by it in accordance with this Section.

(2) Any modification shall be accomplished by the filing and service of a supplemental order and decision by the Commission in the same manner as provided in this Section.

8-108. Relief—Penalties

§ 8-108. Relief; Penalties. Upon finding a civil rights violation, a hearing officer may recommend and the Commission or any three-member panel thereof may provide for any relief or penalty identified in this Section, separately or in combination, by entering an order directing the respondent to:

(A) Cease and Desist Order. Cease and desist from any violation of this Act.

(B) Actual Damages. Pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant.

(C) Hiring; Reinstatement; Promotion; Backpay; Fringe Benefits. Hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the complainant may have been denied.

(D) Restoration of Membership; Admission To Programs. Admit or restore the complainant to labor organization membership, to a guidance program, apprenticeship training program, on the job training program, or other occupational training or retraining program.

(E) Public Accommodations. Admit the complainant to a public accommodation.

(F) Services. Extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent.

(G) Attorney Fees; Costs. Pay to the complainant all or a portion of the costs of maintaining the action, including reasonable attorney fees and expert witness fees.

(H) Compliance Report. Report as to the manner of compliance.

(I) Posting of Notices. Post notices in a conspicuous place which the commission may publish or cause to be published setting forth requirements for compliance with this Act or other relevant information which the Commission determines necessary to explain this Act.

(J) Making Complainant Whole. Take such action as may be necessary to make the individual complainant whole.

There shall be no distinction made under this Section between complaints filed by the Department and those filed by the aggrieved party.

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8-111. Review under Administrative Review Law

§ 8-111. Judicial Review. **(A)(1) Administrative Review Law.** Any complainant or respondent may apply for and obtain judicial review of an order of the Commission entered under this Act in accordance with the provisions of the Administrative Review Law, as amended.[1]

(2) In any proceeding brought for judicial review, the Commission's findings of fact shall be sustained unless the court determines that such findings are contrary to the manifest weight of the evidence.

(3) Venue. Proceedings for judicial review shall be commenced in the appellate court for the district wherein the civil rights violation which is the subject of the Commission's order was committed.

(B) Judicial Enforcement. (1) When the Commission, at the instance of the Department or an aggrieved party concludes that any person has violated a valid order of the Commission issued pursuant to this Act, and the violation and its effects are not promptly corrected, the Commission, through a panel of 3 members, shall order the Department to commence an action in the name of the People of the State of Illinois by complaint, alleging the violation, attaching a copy of the order of the Commission and praying for the issuance of an order directing such person, his or her or its officers, agents, servants, successors and assigns to comply with the order of the Commission.

(2) Upon the commencement of such action the court shall have jurisdiction over the proceedings and power to grant or refuse, in whole or in part, the relief sought or impose such other remedy as the court may deem proper.

(3) The court may stay an order of the Commission in accordance with the Administrative Review Law, pending disposition of the proceedings.

(4) The court may punish for any violation of its order as in the case of civil contempt.

(5) Venue. Proceedings for judicial enforcement of a Commission order shall be commenced in the circuit court in the county wherein the civil rights violation which is the subject of the Commission's order was committed.

(C) Limitation. Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act.

[1] Chapter 110, ¶3-101 et seq.

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APPENDIX H

Chapter 24 — Cities and Villages

10-1-1. Commissioners—Appointment—Quorum—Other office—Oath

§ 10-1-1. The mayor of each municipality which adopts this Division 1 as hereinafter provided shall, not less than 40 nor more than 90 days after the taking effect of this Division 1 in such municipality, appoint 3 persons, who shall constitute and be known as the civil service commissioners of such municipality, one for 3 years, one for 2 years and one for one year from the time of appointment and until their respective successors are appointed and qualified. In every year thereafter the mayor shall, in like manner, appoint one person as the successor of the commissioner whose term shall expire in that year to serve as such commissioner for 3 years and until his successor is appointed and qualified. Two commissioners shall constitute a quorum. All appointments to the commission, both original and to fill vacancies, shall be so made that not more than 2 members shall, at the time of appointment, be members of the same political party. The commissioners shall hold no other lucrative office or employment under the United States, the State of Illinois, or any municipal corporation or political division thereof. Each commissioner, before entering upon the duties of his office, shall take the oath prescribed by the constitution of this state.

However, in any municipality having the commission form of municipal government, the appointment of civil service commissioners shall be made by the corporate authorities, and the corporate authorities may, by ordinance, provide that 5 commissioners shall be so appointed, one for one year, 2 for 2 years and 2 for 3 years. The corporate authorities shall appoint, in a like manner, the suc-

cessors of the commissioners whose terms expire in that year to serve as commissioners for 3 years and until their successors are appointed and qualified. Three members shall constitute a quorum, and no more than 3 of the commissioners shall be of the same political party. If such municipality has adopted this Division 1 prior to the effective date of this amendatory Act of 1965, and subsequently provides, by ordinance, for 5 commissioners, 2 additional commissioners shall be so appointed, one for 2 years and one for 3 years, and successors shall be appointed in a like manner as commissions established after such effective date.

10-1-2. Removal—Vacancy

§ 10-1-2. The mayor may, in his discretion, remove any commissioner for incompetence, neglect of duty or malfeasance in office. The mayor shall within 10 days report in writing any such removal to the corporate authorities, with the reasons therefor. Any vacancy in the office of commissioner shall be filled by appointment by the mayor or, if the municipality is under the commission form of municipal government, then by the corporate authorities.

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10-1-5. Rules—Powers of commission

§ 10-1-5. The commission shall make rules to carry out the purposes of this Division 1, and for examinations, appointments and removals in accordance with its provisions, and the commission may, from time to time, make changes in the original rules.

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10-1-13. Promotions—Basis

§ 10-1-13. The commission shall, by its rules, provide for promotions in such classified service, on the basis of ascertained merit and seniority in service and examination and shall provide, in all cases where it is practicable, that vacancies shall be filled by promotion. * * *

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10-1-18.1. Police removals or suspensions—Cities over 500,000—Notice—Hearings—Determinations

§ 10-1-18.1. In any municipality of more than 500,000 population, no officer or employee of the municipality whose appointment has become complete may be removed or discharged, or suspended for more than 30 days except for cause upon written charges and after an opportunity to be heard in his own defense by the Police Board. Before any such officer or employee may be interrogated or examined by or before any disciplinary board, or departmental agent or investigator, the results of which hearing, interrogation or examination may be the basis for filing charges seeking his removal or discharge, he must be advised in writing as to what specific improper or illegal act he is alleged to have committed; he must be advised in writing that his admissions made in the course of the hearing, interrogation or examination may be used as the basis for charges seeking his removal or discharge; and he must be advised in writing that he has the right to counsel of his own choosing present to advise him at any hearing, interrogation or examination; and a complete record of any hearing, interrogation or examination shall be made and a complete transcript thereof made available to such officer or employee without charge and without delay.

Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held.

The Police Board shall establish rules of procedure not inconsistent with this Section respecting notice of charges and the conduct of the hearings before the Police Board, or before any member thereof appointed by the Police Board to hear the charges. The Police Board, or any member thereof, is not bound by formal or technical rules of evidence, but hearsay evidence is inadmissible. The person against whom charges have been filed may appear before the Police Board or any member thereof, as the case may be, with counsel of his own choice and defend

himself; shall have the right to be confronted by his accusers; may cross-examine any witness giving evidence against him; and may by counsel present witnesses and evidence in his own behalf.

The Police Board or any member thereof designated by it, may administer oaths and secure by its subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. All proceedings before the Police Board or member thereof shall be recorded. No continuance may be granted after a hearing has begun unless all parties to the hearing agree thereto. The findings and decision of the Police Board, when approved by the Board, shall be certified to the superintendent and shall forthwith be enforced by the superintendent.

A majority of the members of the Police Board must concur in the entry of any disciplinary recommendation or action.

Nothing in this Section limits the power of the superintendent to suspend a subordinate for a reasonable period, not exceeding 30 days.

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10-1-39. Witnesses—Compelling attendance and production of books

§ 10-1-39. Any person who shall be served with a subpoena to appear and testify, or to produce books and papers, issued by the commission or by any commissioner or by any board or person acting under the orders of the commission in the course of an investigation conducted either under the provisions of Section 10-1-18 or 10-1-20, and who shall refuse or neglect to appear or to testify, or to produce books and papers relevant to the investigation, as commanded in such subpoena, is guilty of a misdemeanor, and shall, on conviction, be punished as provided in Section 10-1-40. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit courts of this state and shall be paid from the appropriation for the expenses of the commission. Any circuit court of this state upon application of any such com-

missioner, or officer or board, may in his discretion compel the attendance of witnesses, the production of books and papers, and giving of testimony before the commission, or before any such commissioner, investigating board or officer, by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before such court. Every person who, having taken an oath or made affirmation before a commissioner or officer appointed by the commission authorized to administer oaths shall swear or affirm wilfully, corruptly and falsely shall be guilty of perjury and upon conviction shall be punished accordingly.

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10-1-45. Review under Administrative Review Law

§ 10-1-45. The provisions of the Administrative Review Law, and all amendments and modifications thereof,[1] and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of a Civil Service Commission, or of the Police Board of a city of more than 500,000 population. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.[2]

[1] Chapter 110, ¶ 3-101 et seq.

[2] Chapter 110, ¶ 3-101.

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